

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Establishment of a Class A
Television Service
MM Docket No. 00-10

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

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By the Commission:

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I. INTRODUCTION

1. In April 2000 we released a *Report and Order* establishing a Class A television service.¹ Our action implemented the Community Broadcasters Protection Act of 1999 (“CBPA”), which was signed into law November 29, 1999.² Pursuant to the CBPA and our implementing rules, certain qualifying low-power television (“LPTV”) stations will be accorded Class A status. Class A licensees will have “primary” status as television broadcasters, thereby gaining a measure of interference protection from full-service television stations, even as those stations convert to a digital format. The CBPA and our *Report and Order* will facilitate the acquisition of capital needed by LPTV stations to allow them to continue to provide free, over-the-air programming, particularly locally-produced programming, to their communities. In this *Memorandum Opinion and Order on Reconsideration*, we dispose of petitions for reconsideration of the *Report and Order*, make changes to some of our rules, and provide clarification of other rules.³

II. BACKGROUND

2. From its creation by the Commission in 1982, the low power television service has been a "secondary spectrum priority" service whose members "may not cause objectionable interference to existing full-service stations, and ... must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs."⁴ Currently, there are approximately 2,300 licensed

¹ *Report and Order, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, 15 FCC Rcd 6355 (2000)(“*Report and Order*”).

² Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f) (CBPA). This bill was enacted as part of the Intellectual Property and Communications Omnibus Reform Act of 1999, which itself is part of a larger consolidated omnibus appropriations bill entitled “Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.”

³ The list of petitioners is attached at Appendix B.

⁴ *Report and Order* in BC Docket No. 78-253, 51 R.R. 2d 476, 486 (1982). *See also id.* at n. 23: “[Because] it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service, we shall not take

LPTV stations in approximately 1,000 communities,⁵ operating in all 50 states. These stations serve both rural and urban audiences. Because they operate at reduced power levels,⁶ LPTV stations serve a much smaller geographic region than full-service stations and can fit into areas where a higher power station cannot be accommodated in the Table of Allotments. In many cases, LPTV stations may be the only television station in an area providing local news, weather, and public affairs programming. Even in some well-served markets, LPTV stations may provide the only local service to residents of discrete geographical communities within those markets. Many LPTV stations air “niche” programming, often locally produced, to residents of specific ethnic, racial, and interest communities within the larger area, including programming in foreign languages.⁷

3. The LPTV service has significantly increased the diversity of broadcast station ownership. Stations are operated by such diverse entities as community groups, schools and colleges, religious organizations, and a wide variety of small businesses. The service has also provided first-time ownership opportunities for minorities and women.⁸

4. In the CBPA, Congress found that the future of low-power television is uncertain.⁹ Because LPTV stations had secondary spectrum status, they could be displaced by full-service TV stations that sought to expand their own service area, or by new full-service stations that entered the same market. The statute found that this regulatory status affects the ability of LPTV stations to raise necessary capital.¹⁰ In addition, Congress recognized that the conversion to digital television further complicates the uncertain future of LPTV stations. In assigning DTV channels, the Commission maintained the secondary status of LPTV stations and TV translators and, in order to provide all full-service stations with a second channel, was compelled to establish DTV allotments that will displace a number of LPTV stations.¹¹ Although the

low power stations into account in authorizing full-service stations, and we urge low power applicants to consider this fact when they select channels.”

⁵ *Public Notice*, “Broadcast Station Totals as [of] September 30, 2000” (*rel.* December 1, 2000).

⁶ LPTV stations may radiate up to 3 kilowatts of power for stations operating on the VHF band (*i.e.*, channels 2 through 13), and 150 kilowatts of power for stations operating on the UHF band (*i.e.*, channels 14 through 69). By comparison, full-service stations on VHF channels 2-6 and 7-13 radiate up to 100 kilowatts and 316 kilowatts of power, respectively, and stations on the UHF channels radiate up to 5,000 kilowatts of power. LPTV signals typically extend to a range of approximately 15 to 20 miles, while the signals of full-service stations can reach as far as 60 to 80 miles away.

⁷ *See Report and Order* at ¶ 2.

⁸ *LPTV First Report and Order*, 9 FCC Rcd at 2555 (1994). *See also*, *Sixth Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 11 FCC Rcd 10968, 10995 (1996).

⁹ Section-by-Section Analysis to S. 1948, the Act known as the “Intellectual Property and Communications Omnibus Reform Act of 1999,” as printed in the Congressional Record of November 17, 1999 at pages S 14708 – 14726 (“Section-by-Section Analysis”), at S 14724.

¹⁰ Section-by-Section Analysis at S 14724.

¹¹ In the DTV proceeding the Commission estimated that approximately 55 to 65 percent of existing LPTV stations and 80 to 90 percent of all TV translator stations would be able to continue to operate and that operations in or near major urban areas would be most affected by the implementation of the DTV service. *Sixth Further*

Commission has taken a number of steps to mitigate the impact of the DTV transition on stations in the LPTV service,¹² that transition nonetheless would have significant adverse effects on many stations, particularly LPTV stations operating in urban areas where there are few, if any, available replacement channels for displaced stations.

5. Congress sought in the CBPA to address some of these issues by providing certain low power television stations – to be known as Class A stations -- “primary” spectrum use status. Congress also recognized, however, that, because, of the emerging DTV service, not all LPTV stations could be guaranteed a certain future.¹³ Congress recognized the importance and engineering complexity of the Commission’s plan to convert full-service stations to digital format, and protected the ability of these stations to provide both digital and analog service during the transition.¹⁴

6. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low-power station. To be eligible for Class A status, the CBPA requires that, during the 90 days preceding the date of enactment of the statute: (1) the LPTV station broadcast a minimum of 18 hours per day; (2) the station broadcast an average of at least 3 hours per week of programming produced within the market area served by the station; (3) the station was in compliance with the Commission’s requirements for LPTV stations; and (4) from the date of its application for a Class A license, the station is in compliance with the Commission’s operating rules for full-power television stations. Alternatively, section (f)(2)(B) of the CBPA provides that a station may qualify for Class A status if “the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.” In the *Report and Order*, we concluded that only under limited circumstances, as specified in that Order, would we determine that a station that does not meet the eligibility criteria prescribed by the statute should nonetheless be considered qualified for Class A status.

7. The CBPA establishes a two-part certification and application procedure for LPTV stations seeking Class A status.¹⁵ Within 60 days of the date of enactment, or by January 28, 2000, licensees

Notice of Proposed Rule Making, MM Docket No. 87-268, 11 FCC Rcd 10968 (1996). Television translators, which rebroadcast the programs of full-service TV stations, may be affected to a lesser extent because many translators operate in mountainous areas and are terrain-shielded from other stations. In addition to the DTV impact, hundreds of LPTV and translator stations operate on channels 60-69 and are required by law to vacate these channels by the end of the DTV transition period due to the reallocation of this spectrum for other uses. Full-service TV stations operating on channels 60-69 are also required to relocate to lower channels by that time. *In the Matter of Reallocation of Television Channels 60-69, the 746-806 MHz Band, Report and Order* in ET Docket No. 97-157, 12 FCC Rcd 22953 (1998).

¹² See *Sixth Report and Order, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 12 FCC Rcd 14588 (1997); *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket No. 87-268, 13 FCC Rcd 7418, 7457 (1998).

¹³ Section-by-Section Analysis at S 14725.

¹⁴ Section-by-Section Analysis at S 14724.

¹⁵ The CBPA directed the Commission to send a notice to all LPTV licensees describing the requirements for Class A designation. On December 13, 1999, the Mass Media Bureau issued a *Public Notice* informing the public

intending to seek Class A designation were required to submit to the Commission a certification of eligibility based on the applicable qualification requirements.¹⁶ Pursuant to the *Report and Order*, LPTV licensees that filed timely certifications of eligibility were given until December 11, 2000 to file an application for Class A designation. In a *Public Notice* released December 5, 2000, the Commission extended the filing deadline for Class A applications until 90 days after release of this *Memorandum Opinion and Order*.¹⁷

8. In the *Report and Order*, we determined that the service areas of LPTV licensees would be preserved from the date the Commission received a certification of eligibility for Class A status, as long as the certification was ultimately approved by the Commission. The *Report and Order* interpreted the CBPA to require that Class A stations protect both existing analog stations and full power analog applicants where the Commission has completed all processing short of grant. Similarly, the *Report and Order* required Class A stations to protect the digital service areas of DTV facilities proposed in an application pending as of the CBPA enactment date (November 29, 1999) where the Commission had completed all processing short of grant as of that date. The *Report and Order* generally applied to Class A applicants and licensees all Part 73 regulations except those that cannot apply for technical or other reasons. The *Report and Order* also addressed a wide range of other issues related to the implementation of the CBPA, including the protected service area of Class A stations, Class A interference protection requirements *vis-à-vis* other TV stations, common ownership restrictions applicable to Class A stations, and the treatment of modification applications filed by Class A licensees.

9. In this *Memorandum Opinion and Order on Reconsideration*, we generally affirm the decisions we reached in the *Report and Order*, although we make some changes and clarify certain aspects of our rules. As explained below, among other things, we reject arguments by petitioners proposing to allow LPTV stations to file for certifications of eligibility beyond the statutory 60-day period. We also deny requests by petitioners proposing to extend for an indefinite period the time in which they may file Class A license applications; however, the application filing deadline was extended in a *Public Notice* after the petitioner's comments were filed. Additionally, we reaffirm the decision in the *Report and Order* that qualified LPTV stations must have been in compliance with the statutory eligibility requirements for a 90 day period preceding the date of enactment of the CBPA. We modify our main studio location requirements with respect to LPTV stations in a commonly owned group, and clarify the definition of "local programming" with respect to LPTV stations in a commonly owned group. We decline to redefine a Class A station's "market area," or to exempt Class A stations from the main studio staffing requirements that apply to full service stations. We permit Class A television stations that convert to digital operation to offer ancillary or supplementary services in the same manner as full power DTV stations. We decline to modify the permissible power levels for Class A service. We clarify that Class A stations have the same limited must carry rights as LPTV stations, but do not have the same must carry

of the statute and the eligibility requirements. *Public Notice*, "Mass Media Bureau Implements Community Broadcasters Protection Act of 1999," (rel. December 13, 1999). The Commission also mailed to every LPTV licensee a "Statement of Eligibility for Class A Low Power Television Station Status." Licensees intending to convert to Class A status had until January 28, 2000 to complete the statement and return it to the Commission.

¹⁶ More than 1,700 applicants filed timely requests for certification for Class A eligibility.

¹⁷ *Public Notice*, "Commission Extends Filing Deadline for Class A License Applications," DA 00-2743 (rel. December 5, 2000)(extending the deadline "in order to give eligible LPTV licensees adequate time to prepare and file their Class A applications consistent with any clarifications or rule changes that may be adopted on reconsideration.").

rights as full service television stations under Part 73. We reaffirm our decision in the *Report and Order* that low power foreign language stations have the same eligibility requirements for Class A status as any other LPTV station, and reaffirm our decision to allow deviation from the statutory Class A eligibility criteria only where such deviations are insignificant or where compelling circumstances exist.¹⁸ We decline to modify our determination that Class A stations must protect existing analog stations and full-service applicants for new stations where the Commission has completed all processing short of grant necessary to provide a reasonably ascertainable Grade B contour, but not other pending NTSC applications and allotment proposals for new stations. We generally reaffirm our position regarding Class A protection of DTV stations seeking to maximize power or make technically necessary adjustments to allotted engineering parameters. We modify our decision regarding the use of carrier frequency offsets by Class A stations, requiring the use of such offsets by all Class A stations within nine months of the release date of this *Memorandum Opinion and Order* and in the intervening period to accommodate, where possible, certain Class A and full-service NTSC station proposals. Finally, we decline to modify our decision to require that Class A stations use the standard television call signs with the suffix “-CA.”

III. ISSUE ANALYSIS

A. Certification and Application for License

1. Statutory Time Frames

10. Section (f)(1)(B) of the CBPA states:

NOTICE TO AND CERTIFICATION BY LICENSEES.—Within 30 days after the date of the enactment of the Community Broadcasters Protection Act of 1999, the Commission shall send a notice to the licensees of all low-power television licensees that describes the requirements for class A designation. *Within 60 days after such date of enactment, licensees intending to seek class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. ...*¹⁹ (emphasis added).

11. Section (f)(1)(C) provides that, consistent with the requirements set forth in the CBPA, a licensee “may” submit an application for Class A designation “within 30 days after final regulations are adopted” implementing the CBPA. We stated in the *Report and Order* that we would construe the phrase “final regulations” in this context to mean the effective date of the Class A rules adopted in the Order. Thus, we concluded that Class A applications may be filed beginning on the effective date of the rules. We also noted in the *Report and Order* that although the statute states that applicants “may” apply for licenses within 30 days after the adoption of final implementing rules, the statute gives no ultimate deadline for the filing of these applications. In order to allow sufficient time to potential applicants to prepare their applications, we allowed licensees that filed timely certifications of eligibility to file Class A applications up to 6 months after the effective date of the rules.²⁰

¹⁸ *Report and Order* at ¶ 33.

¹⁹ 47 U.S.C. § 336(f)(1)(B).

²⁰ *Report and Order* at ¶ 13. This application filing deadline did not apply to Class A-eligible LPTV stations operating on channels 52-69.

12. Ross requests that we lengthen the 60-day filing period for certifications of eligibility, claiming it was unaware of the deadline and did not purchase its LPTV station until after the deadline had passed.²¹ We deny this request. The 60-day certification period was clearly specified by Congress in the CBPA. The statute states that licensees intending to seek Class A designation “shall” submit a certification of eligibility within 60 days after the date of enactment of the Act. The CBPA was signed into law on November 29, 1999; thus, the time for filing a certificate of eligibility ended 60 days later, on January 28, 2000. To comply with the requirements of the statute, parties must have made the requisite submission within the time period specified.

13. WB challenges our decision to allow applicants 6 months from the effective date of the rules in which to file a Class A application. WB claims that the use of the permissive word “may” in Section (f)(1)(C) indicates only that qualified LPTV stations “may” file an application for a Class A license, but are not required to do so. According to WB, applicants that chose to file applications were required by Section (f)(1)(C) to do so within 30 days after final rules were adopted.²²

14. We disagree with WB’s interpretation of the statute. Section (f)(1)(C) states that applicants “may” file license applications within 30 days from the adoption of final implementing rules. In contrast, Section (f)(1)(B) states that licensees intending to seek Class A designation “shall” file a certification of eligibility within 60 days after enactment. Thus, even though no licensee was required to file a certificate of eligibility, any licensee that wished to do so was required to file within 60 days after enactment. We continue to believe that the use of the word “may” in relation to applications indicates that the 30 day filing period is permissive only, and not mandatory. Thus, applicants were not required to file within 30 days following adoption of final rules, although they were permitted to do so. We also continue to believe that allowing a longer filing period was appropriate to give LPTV licensees adequate time to prepare and file their Class A applications consistent with the rules adopted in the *Report and Order*. As noted above, in response to requests from several commenters²³ we recently extended the filing deadline; specifically, we extended the deadline to 90 days after release of this *Memorandum Opinion and Order on Reconsideration* so that eligible LPTV licensees could consider the actions we take today in preparing and filing their Class A applications.

2. Ongoing Eligibility

15. In the *Report and Order*, we noted that, although the statute provides clear guidance on the time within which a licensee must file a certification of eligibility in order to qualify for Class A status, it does not address the specific question whether the Commission may continue to accept Class A applications in the future from LPTV stations that did not file a certification of eligibility by the statutory deadline. Although commenters asked that we expand the initial group of eligible LPTV stations beyond those that filed their certifications in a timely manner, we concluded that the CBPA was designed to permit a one-time conversion of a single pool of LPTV applications that met specific criteria before the statute was enacted. Accordingly, we declined in the *Report and Order* to expand the eligible class of LPTV licensees and to allow ongoing conversion to Class A status.

²¹ Ross Petition at 1-6.

²² WB Petition at 12-13; Davis Opposition at 7 (citing WB Petition at 10-16).

²³ Davis Petition at 7-9; KM Petition at 8-9; Ross Petition at 1-6; KM Opposition at 7-8 (citing Davis Petition at 7-9; Kelly Petition at 2, 10-11; KM Petition at 8-9; WB Petition at 10-16; KM Reply at 5-6). *See also* Emergency Petition filed on December 4, 2000 by John W. Smith, Jr., which we dismiss as moot.

16. KM asks that we commit to opening 30-day filing periods for Class A applications in the future.²⁴ A number of other petitioners also argue that the Commission should use its discretion under the CBPA to allow LPTV licensees to seek Class A status based on their performance on a going forward basis, rather than only during the statutory 90-day window preceding adoption of the Act.²⁵ Kelly argues the Commission should extend Class A eligibility to entities with LPTV authorizations that “may desire” to qualify for Class A status in the future.²⁶ Bozeman argues that an LPTV licensee that could not meet the statutory criteria within the three month time period specified in the statute should nonetheless be deemed a “qualified” licensee entitled to Class A status if “for any reason” the Commission determines that this would serve “the public interest, convenience and necessity.”²⁷

17. For the reasons cited in the *Report and Order*, we deny this request. The intent of Congress in enacting the CBPA was to establish the rights of a very specific, already-existing group of LPTV stations.²⁸ As noted in the *Report and Order*, the statute itself states its intent to apply to a small number of stations: “Since the creation of low-power television licensees by the Federal Communications Commission, a small number of license holders have operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available.”²⁹ The statute specifically states that an eligible low-power station must have met certain requirements “during the 90 days preceding the date of the enactment of the Community Broadcasters Protection Act of 1999.”³⁰ During that 90-day period, a qualifying station was to have “broadcast a minimum of 18 hours per day and an average of at least 3 hours weekly of local programming...” and been “in compliance with the Commission’s requirements applicable to low-power television stations...”³¹ To comply with the requirements of the statute, parties must make the requisite showing for the time period specified.

18. While we may have discretion under Section (f)(2)(B) to determine that other LPTV stations qualify for Class A status, we do not believe that the public interest would be served by the ongoing conversion of LPTV stations to Class A status in the future. We believe that the basic purpose of the CBPA was to afford existing LPTV stations a window of opportunity in which to convert to Class A stations. Limiting the eligible group of LPTV stations to those that met the statutory criteria for the period preceding the Act appropriately balances the interests of these LPTV stations against those of full-service TV stations, particularly as the television service transitions to a digital mode. Out-of-core full service stations may encounter difficulties locating adequate in-core digital spectrum. Also, we wish to allow for the possibility of new DTV entrants. To increase the number of primary stations competing for analog or digital spectrum would further exacerbate the existing broadcast spectrum shortage. In view of the fact

²⁴ KM Petition at 8-9.

²⁵ Bozeman, et. al. Petition at 1-4; CBA Petition at 2-4; Saga Petition at 6-7; Tiger Eye Petition at 1-4.

²⁶ Kelly Petition at 4-5.

²⁷ Bozeman Petition at 2 (citing 47 U.S.C. § 336(f)(2)(B)).

²⁸ “[I]t is not clear that all LPTV stations should be given such a guarantee [of Class A status] in light of the fact that many existing LPTV stations provide little or no original programming service.” Section-by-Section Analysis at S14725.

²⁹ CBPA, § (b)(1).

³⁰ 47 U.S.C. § 336(f)(2)(A)(i).

³¹ 47 U.S.C. § 336(f)(2)(A)(i)(III).

that LPTVs were originally licensed on a secondary basis, and subsequently allowed to convert to Class A status only under the limited eligibility criteria established by the CBPA based on their beneficial past service to the public, we do not believe it is appropriate to expand generally the group of LPTV stations eligible to convert to Class A beyond that established by Congress.

B. Qualifying Low-Power Television Stations

1. Locally-Produced Programming

19. Section (f)(2)(A) of the CBPA requires that, during the 90 days preceding the date of enactment of the CBPA, LPTV stations must have broadcast an average of at least 3 hours per week of programming produced within the “market area” served by the station. Because the CBPA does not define “market area,” we proposed in the *Notice* to define it as the station’s protected service area.³² In the *Report and Order*, we expanded our proposed definition of “market area” to encompass the area within the predicted Grade B contour determined by the Class A station’s antenna height and power. We determined that the predicted Grade B contour was the appropriate measure for determining the provision of locally oriented programming for the communities served by LPTV stations.

20. With respect to a group of commonly controlled stations, we noted that the market area was the area within the predicted Grade B contours of any of the stations in the commonly owned group.³³ To avoid any conflicts between the local market definition and our main studio rule, we also stated we would consider programming produced at the main studio of any grandfathered³⁴ Class A station to be locally produced programming even if the main studio is located outside the station’s Grade B contours. We specifically stated that it was not appropriate to consider programming produced anywhere in the DMA to be “locally produced” programming.³⁵

21. Several petitioners, including Carolina, Kelly and WB, ask that we clarify the “local programming” requirement.³⁶ The current rule states, in part, that “locally produced programming” is “. . . produced within the predicted Grade B contour of the station or within the predicted Grade B contours of any of the stations in a commonly owned group. . . .”³⁷ We agree with KM that with respect to a commonly owned group of Class A stations, the current definition could be interpreted to permit a station to consider programming that is produced by a commonly owned station that serves a separate and possibly far distant market to be “local.”³⁸ Such an interpretation would contravene the intent of Congress that Class A

³² *Notice* at ¶ 19.

³³ *Report and Order* at ¶¶ 17-19.

³⁴ If a Class A station used its main studio on or before the date of enactment of the CBPA (November 29, 1999), that studio is “grandfathered.” The location requirements for main studios that were established in the *Report and Order* and modified in this Order do not apply to these grandfathered studios.

³⁵ *Report and Order* at ¶ 20.

³⁶ Carolina Petition at 1-3; Kelly Petition at 11-14; WB Petition at 21; Davis Opposition at 2-6(citing Carolina Petition at 1-3; Kelly Petition at 11-14; WB Petition at 21); KM Opposition at 11(citing WB Petition at 21); KM Reply at 5.

³⁷ 47 C.F.R. § 73.600.

³⁸ KM Opposition at 11 (citing WB Petition at 21).

stations provide locally originated programming in their geographic market areas.

22. We clarify the “local programming” requirement. We agree with WB that, for a Class A station’s programming to qualify as “local programming” under the CBPA, the programming must be produced within the same “market area” in which it is broadcast.³⁹ For a single Class A station, “locally produced programming” is programming produced within the predicted Grade B contour of the station broadcasting the program or produced at the station’s main studio. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may consider the programming produced within any of these contours as “local programming.” If a Class A station is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly-owned group, it may not consider the programming produced in any of those distant stations’ contours “local programming.” We are clarifying the rule accordingly.

23. We will not grant Davis’ request that we require “local programming” to address the interests of the LPTV station’s local community in any specific manner.⁴⁰ We agree with KM that the CBPA focuses on where the local programming was produced, rather than on its content or who may have produced it.⁴¹ Moreover, we find that locally originated programming is likely to serve local needs.

24. Finally, we will not redefine a Class A station’s “market area” to encompass its Designated Market Area (DMA), as PAI and Univision request.⁴² As we said in the *Report and Order*, the predicted Grade B signal contour of an LPTV station, which typically would not extend beyond 20-25 miles, is generally smaller than the DMA, which normally encompasses several counties. In some cases, different communities within a DMA might be served by different Class A stations.⁴³ Given the disparity in size and the local nature of Class A service, defining a Class A station’s “market area” as the Grade B signal contour rather than the much larger DMA is more appropriate. PAI notes that, if DTV maximization requires the change of a station’s contour and the location of the studio is not within the new contour, the physical location of the Class A station’s studio might need to be changed.⁴⁴ Should these circumstances arise at some future time, affected stations may apply for a waiver of the Commission’s rules.⁴⁵ We will address individual circumstances on a case-by-case basis.

2. Operating Requirements

25. To qualify for Class A status, the CBPA provides that, during the 90 days preceding enactment of the statute, a station must have been in compliance with the Commission’s requirements for LPTV stations.⁴⁶ In addition, beginning on the date of its application for a Class A license and thereafter, a

³⁹ WB Petition at 21.

⁴⁰ Davis Opposition at 2-6 (citing Carolina Petition at 1-3; Kelly Petition at 11-14; WB Petition at 21).

⁴¹ KM Reply at 5 (citing Section 336(f)(2)(A)(i)(II)).

⁴² PAI Petition at 5-7(citing *Report and Order* at ¶¶ 17-20); Univision Petition at 6-7.

⁴³ *Report and Order* at ¶ 20.

⁴⁴ PAI Petition at 7.

⁴⁵ See 47 C.F.R. § 1.3.

⁴⁶ 47 U.S.C. § 336(f)(2)(A)(i)(III).

station must be “in compliance with the Commission’s operating rules for full-power stations.”⁴⁷ In the *Report and Order*, we stated that we would apply to Class A licensees all Part 73 regulations except for those that cannot apply for technical or other reasons. We required Class A licensees to maintain a main studio within the station’s Grade B contour, but grandfathered all main studios that were in existence on April 4, 2000, and operated by LPTV stations. We also maintained the current LPTV maximum power levels for Class A stations. Our rules governing the new Class A television service were placed in a new Subpart J under Part 73.⁴⁸

26. Some parties argue that the application of Part 73 rules to Class A is overly burdensome.⁴⁹ Others claim that our decision to place the Part 73 rules applicable to Class A stations in a new Subpart J (“Class A Television Broadcast Stations”) rather than in Subpart E (“Television Broadcast Stations”) violates Congress’ intent to elevate Class A stations to full power status.⁵⁰ As we said in the *Report and Order*, we intend to apply to Class A licensees all Part 73 rules, except for those which are inconsistent with the manner in which LPTV stations are authorized or the lower power at which these stations operate.⁵¹ We will apply the Part 73 regulations to Class A applicants or licensees, except for those that cannot apply for technical or other reasons, because this course of action is most consistent with the language in the CBPA.⁵²

27. *Main Studio Requirements.* Tiger Eye argues that the Commission should not apply to Class A stations the same main studio staffing requirements applicable to full service stations as these requirements are too costly for low power stations.⁵³ It contends that LPTV stations, and Class A stations, can be operated with fewer than two full-time employees, using part-time and/or shared employees along with necessary management and technical personnel. According to Tiger Eye, to add the necessary full-time employees to each of its LPTV stations nationwide to comply with these staffing requirements would add many thousands of dollars to its monthly operating expenses, with little or no operational benefit to the company or service benefit to the public.⁵⁴

28. The Commission requires stations licensed under Part 73 to maintain a “meaningful management and staff presence” at the station’s main studio in order to serve the needs and interests of the residents of the station’s community of license.⁵⁵ The Commission has defined a minimally acceptable “meaningful

⁴⁷ 47 U.S.C. § 336(f)(2)(A)(ii).

⁴⁸ *Report and Order* at ¶¶ 23-31.

⁴⁹ IBN Petition at 1-2; Tiger Eye Petition at 4-6.

⁵⁰ CBA Petition at 11-12; Grossman Petition at 2.

⁵¹ *Report and Order* at ¶¶ 21-31.

⁵² *Report and Order* at ¶ 23.

⁵³ Tiger Eye Petition at 4-6.

⁵⁴ *Id.* at 4-5.

⁵⁵ *See Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), clarified, 3 FCC Rcd 5024, 5026 (1988).

presence" as full-time managerial and full-time staff personnel.⁵⁶ It stated that there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." It further explained that the standard does not necessarily require two people at the main studio; rather, management and staff presence are required on a full-time basis, which may consist of more than two people working on part-time bases.⁵⁷

29. While we recognize that LPTV stations face financial constraints due to their generally smaller coverage areas, we do not believe it is appropriate to exempt Class A stations from the same staffing requirements we impose on full service stations under Part 73. The CBPA defines a "qualifying" LPTV station as one that "from and after the date of its application for a class A license, ... is in compliance with the Commission's operating rules for full-power television stations." The Commission's main studio staffing requirements are intended to ensure that stations maintain a local responsive presence in the community. We have stated that "exposure to daily community activities and other local media of communications helps stations identify community needs and interests, which is necessary to operate in today's competitive marketplace and to meet our community service requirements."⁵⁸ We have concluded that, to accomplish these objectives, stations must maintain, at a minimum, full-time managerial and full-time staff personnel. In light of the CBPA's intent that Class A stations comply with all of the requirements of full-power TV stations, we believe it is both reasonable and appropriate to require Class A stations to meet the same obligations with respect to maintaining a local community presence as their full service counterparts.

30. Univision argues that we erred in requiring Class A stations to locate their main studios within the station's Grade B contour.⁵⁹ Instead, Univision supports allowing Class A stations to locate their main studios within the principal community contour of any station serving that market, or 25 miles from the center of its community of license, as we permit for full-service stations.⁶⁰ In our *Report and Order*, we explained that we would not allow Class A stations the same latitude as full service stations in locating their main studios because Class A stations are low power and will serve a smaller area than most full service stations.⁶¹ We will, however, amend our main studio requirement. For a single Class A station, a station's main studio shall be located within the station's predicted Grade B contour. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may locate their main studio within any of these contours.⁶² If a Class A station

⁵⁶ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991), clarified, 7 FCC Rcd 6800 (1992), aff'd, 10 FCC Rcd 3759 (1995)(*Jones Eastern*).

⁵⁷ *See Jones Eastern*, 6 FCC Rcd at 3616 n. 2; 7 FCC Rcd at 6800 n. 4. Moreover, while management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a 'home base.'" *Id.*, 7 FCC Rcd at 6802.

⁵⁸ *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3218 (1987).

⁵⁹ Univision Petition at 9-11.

⁶⁰ See 47 C.F.R. § 73.1125.

⁶¹ *Report and Order* at ¶ 25.

⁶² Thus, two or more commonly owned Class A stations having contiguous predicted Grade B contours may construct and maintain one main studio within their combined boundaries, provided that main studio functions as the main studio for all the stations.

is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly-owned group, its main studio shall be located within its own predicted Grade B contour. We will amend our rule accordingly.

31. We believe that requiring Class A stations to locate their main studios as described above will allow Class A stations greater flexibility in determining the location of their main studio while ensuring that these stations' main studios are accessible to the population that actually receives the station's programming. We note that our requirement applies only to newly created main studios. In the *Report and Order* we grandfathered all main studios in existence and operated by LPTV stations on or before the date of enactment of the CBPA.⁶³ We stated that we would not require these stations to change the location of their existing studio, or build a new studio, to comply with our Class A rules.⁶⁴

32. *Power Limits.* Grossman asks the Commission to increase the permitted power limits for Class A stations.⁶⁵ We will not raise the ERP limit for Class A stations beyond the current LPTV maximum power levels. As we stated in the *Report and Order*, we believe that these power levels are sufficient to preserve existing service, which is consistent with Congress' objective underlying the CBPA.⁶⁶ Congress emphasized in the CBPA the importance of balancing the needs of LPTV licensees against the needs of full-service stations as they transition to a digital format. We do not wish to risk hindering the implementation of digital television. We will retain the current LPTV maximum power level requirements for Class A stations.⁶⁷

33. *Ongoing Obligations.* In the *Report and Order*, we stated that "in addition to requiring Class A applicants and licensees to comply with the operating requirements for full-power television stations, the CBPA also requires that Class A licensees continue to meet the eligibility criteria established for a qualifying low-power station in order to retain Class A status."⁶⁸ We thus adopted a rule requiring Class A television broadcast stations to "broadcast a minimum of eighteen hours per day" and "an average of at least three hours per week of locally produced programming each quarter."⁶⁹ Univision argues that these requirements only apply to the ninety days preceding the date of enactment of the statute. According to Univision, after the date of its application for a Class A license a station must only be in compliance with the Commission's regulations governing full-power television stations.⁷⁰

34. We disagree with Univision's argument. The CBPA makes clear that Class A licensees must

⁶³ The CBPA was enacted on November 29, 1999.

⁶⁴ *Report and Order* at ¶ 25.

⁶⁵ Grossman Petition at 3.

⁶⁶ According to Congress, the purpose of the CBPA is to "ensure that many communities across the nation will continue to have access to free, over-the-air low-power television (LPTV) stations, even as full-service television stations proceed with their conversion to digital format." Section-by-Section Analysis at S 14724 (emphasis added).

⁶⁷ See 47 C.F.R. § 74.735.

⁶⁸ *Report and Order* at ¶ 30 (citing 47 U.S.C. sec. 336(f)(1)(A)(ii)).

⁶⁹ 47 C.F.R. § 73.6001(b).

⁷⁰ Univision Petition at 3-6 (citing 47 U.S.C. §§ 336(f)(1)(A)(ii), (f)(2)).

“continue” to meet the qualifying low-power station eligibility criteria, indicating an intent that the criteria to qualify for Class A status create ongoing obligations. Moreover, it would be inconsistent with the overall intent of the CBPA -- to afford Class A status only to stations that provide a substantial amount of locally-originated programming -- to relieve stations of that obligation once Class A status has been achieved. We thus affirm our previous conclusion that Class A licensees must continue to meet the minimum operating hours and locally-produced programming obligations. Of course, Class A licensees may apply to the Commission for a waiver of the rules.⁷¹

35. *Fines and Penalties.* PAI asks that the Commission explicitly state that Class A stations will be subject to Part 73 regulations concerning fines and penalties. PAI states that “[a]bsent such a regulation, there is some question whether a Class A licensee could be subject to loss of license for simply a one time failure to follow any of the requirements set forth in the CPBA.”⁷² As requested, we clarify that Class A licensees are subject to the regulations regarding fines and penalties applicable to full power stations.⁷³ Although Class A licensees will not be subject to loss of license for failure to continue to comply with the eligibility requirements in section (f)(2)(A) of the CPBA, they are subject to loss of Class A status if they fail to meet these ongoing obligations. We held in the *Report and Order* that we would not require Class A licensees to certify annually their continued compliance with Class A eligibility criteria and applicable Part 73 requirements.⁷⁴ Rather, we said that we would require Class A licensees, like other Part 73 licensees, to certify compliance with applicable FCC rules at the time of renewal, and noted that such renewal applications would be subject to petitions to deny.⁷⁵ We also adopted a rule stating that “[l]icensees unable to continue to meet the minimum operating requirements for Class A television stations, or which elect to revert to low power television status, shall promptly notify the Commission in writing, and request a change in status.”⁷⁶

36. *DTV Broadcast Requirements.* Finally, we grant the request of Telecom Services, Inc.⁷⁷ that we permit Class A television stations that convert to digital operation to “offer telecommunications services of any nature, consistent with the public interest, convenience and necessity, on an ancillary or supplementary basis” in the same manner as full power DTV stations.⁷⁸ In this regard, digital Class A stations must broadcast a free over-the-air video program service at least comparable to NTSC technical quality under the digital transmission standard applicable to full service stations.⁷⁹ Such services will be subject to the

⁷¹ 47 C.F.R. § 1.3.

⁷² PAI Petition at 8.

⁷³ We will amend the Class A rules to include this provision.

⁷⁴ *Report and Order* at ¶ 30.

⁷⁵ We also said that we would require licensees seeking to assign or transfer a Class A license to certify that the station has been operated in compliance with the rules applicable to Class A stations, and require Class A assignees and transferees to certify that they will operate the station in accordance with these rules. *Id.*

⁷⁶ 47 C.F.R. § 73.6001(d). In appropriately compelling circumstances involving a temporary inability to comply, a licensee may apply to the Commission for Special Temporary Authority to operate at variance with the CBPA’s programming and operational requirements, without affecting its Class A status.

⁷⁷ Telecom Services Inc. *ex parte* presentation dated August 28, 2000.

⁷⁸ 47 U.S.C. § 73.624(c).

⁷⁹ *See* 47 C.F.R. § 73.682(d).

fees due under Section 73.624(g) and be subject to the same requirement that they not derogate the free over-the-air video program stream required of digital broadcasters. Taking this action furthers the Commission's goal of encouraging the transition of television broadcasting from analog to digital operation.

By enabling Class A stations to generate additional revenues from ancillary or supplementary services, we seek to encourage the early conversion of Class A stations from analog to digital operation. Accordingly, Sections 73.624(c) and (g) will apply to Class A television stations converting to digital operations. Section 73.624(b) will apply only to the extent that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station.

3. Mandatory Carriage

37. In our *Report and Order*, we stated “[n]othing in this *Report and Order* is intended to affect a Class A LPTV station's eligibility to qualify for mandatory carriage under 47 U.S.C. § 534.”⁸⁰ PAI contends that the statutory language directing that Class A licensees be “subject to the same license terms and renewal standards as the licenses for full-power television stations” indicates congressional intent to confer on Class A stations all the rights associated with primary status, including the same mandatory carriage rights on area cable and satellite systems as full service television broadcast stations.⁸¹ In addition, PAI urges the Commission to reconsider its decision not to include Class A stations in the NTSC and DTV Tables of Allotments in Part 73 because such action precludes Class A stations from mandatory cable and satellite carriage.

38. As PAI explains, under Section 614(a) of the Communications Act of 1934, as amended, cable operators are required to carry the signals of “local commercial television stations.”⁸² Section 614(h)(1)(A) defines a “local commercial television station” as “any full power television broadcast station ... licensed and operating on a channel regularly assigned to its community by the Commission that ... is within the same television market as the cable system.”⁸³ Thus, according to PAI, because the Commission excluded Class A stations from the Table of Allotments in subpart E of Part 73, they are not eligible for mandatory cable and satellite carriage. PAI acknowledges there may be technical reasons to exclude Class A licensees from compliance with the NTSC and DTV Tables of Allotments, but urges the Commission to amend the requirements of the Table of Allotments for Class A stations or to make such stations *de facto* members under the tables to ensure they are accorded the same rights as other primary television broadcasters.

39. We disagree with PAI that Congress intended that Class A stations have the same must carry rights as full-service television broadcast stations under Part 73. Both the language of the CBPA and the accompanying conference report are silent with respect to the issue of must carry rights for Class A stations.⁸⁴ We agree with NCTA, which filed an Opposition to the PAI Petition, that it is unlikely that

⁸⁰ *Report and Order* at ¶ 31, note 61.

⁸¹ PAI Petition for Reconsideration, or Alternatively, for Clarification at 5 (“PAI Petition”); PAI Reply to NCTA Opposition to Petition for Reconsideration at 2 (“PAI Reply”).

⁸² 47 U.S.C. § 534(a).

⁸³ 47 U.S.C. § 534(h)(1)(A).

⁸⁴ NCTA points out a single reference to must carry in the legislative history contained in a letter from the President, Houston Valley Broadcasting Corporation, to the Hon. W.J. “Billy” Tauzin, Chairman, Subcommittee on Telecommunications, Trade, and Consumer Protection. See Opposition of the National Cable Television

Congress intended to grant Class A stations full must carry rights, equivalent to those of full-service stations, without addressing the issue directly. NCTA argues that it is “inconceivable” that Congress would make such a significant change in the must carry requirements “*sub silentio*.”⁸⁵

40. Our conclusion with respect to Class A must carry rights is consistent with the view recently expressed by the Commission in its *Report and Order* implementing the Satellite Home Viewer Improvement Act of 1999.⁸⁶ In that Order, the Commission concluded that Class A stations are low power stations for mandatory carriage purposes, and are therefore not entitled to mandatory satellite carriage.⁸⁷ In light of this determination, we decline to amend the Table of Allotments or grant the other relief sought by PAI.

41. As NCTA also points out in its Opposition, Section 614 establishes two separate sets of must carry eligibility requirements -- one for local commercial television stations and one for “qualified low power stations.” PAI argues that Class A stations should be treated as “local commercial television stations.” However, we agree with NCTA that the statute defines that term to include only “full power” stations, while Class A stations, like LPTV stations, operate at low power.⁸⁸ Moreover, Section 614(h)(1)(B) expressly excludes from the definition of “local commercial television stations” any low power television stations “which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto.”⁸⁹

42. We believe that Congress intended that Class A stations have the same limited must carry rights as LPTV stations. As noted above, Section 614(a) of the Communications Act, as amended, requires the carriage of local television broadcast stations and “qualified” low power television stations in certain limited circumstances. Section 614(h)(2) defines the term “qualified low power station” as any television broadcast station “conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations” that complies with the other criteria established in that section.⁹⁰ Thus, to be eligible for must carry, Class A stations, like other low power television stations,

Association to Petition for Reconsideration, MM Docket No. 00-10, July 7, 2000, at p. 6, note 20 (“NCTA Opposition”).

⁸⁵ NCTA Opposition at 6.

⁸⁶ *Report and Order, In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues*, CS Docket Nos. 00-96 and 99-363, FCC 00-417 (rel. November 30, 2000) (“*SHVIA Report and Order*”).

⁸⁷ *SHVIA Report and Order* at ¶ 137 (“[t]he CBPA did not create a new class of television stations eligible for full-fledged carriage rights on cable systems or satellite carriers.”)

⁸⁸ *Id.* See NCTA Opposition at 2-3.

⁸⁹ 47 U.S.C. § 534(h)(1)(B)(i). PAI asserts that Class A stations operate pursuant to Part 73 and that Part 73 is not a successor regulation to Part 74. PAI Petition at 4, note 1. However, we agree with NCTA that the new Part 73 rules for Class A stations are more properly viewed as “successor regulations” for the group of Class A LPTV stations previously regulated under Part 74. See NCTA Opposition at 3-4.

⁹⁰ 47 U.S.C. § 534(h)(2). Under Section 76.56(b)(3) of the Commission’s rules, promulgated pursuant to Section 614, a cable system that has insufficient full power television stations to reach its channel set aside under the Act shall carry at least one qualified LPTV station.

must comply with the Part 74 rules and the other eligibility criteria established by statute and our rules.⁹¹

43. Just as it is unreasonable to conclude that Congress intended to confer on Class A stations the same must carry rights as full-service stations without addressing this issue directly in the CBPA, we also believe that it is unlikely that Congress intended to take away from LPTV stations their existing must carry rights if they elect to convert to Class A. The principal intent of the CBPA was to provide additional certainty to LPTV stations during the digital transition and to alleviate the limitations that “secondary service” imposed on the ability of these stations to attract capital and to continue to provide high quality broadcast programming. Given the severe impact loss of must carry rights would impose on Class A stations who enjoyed these rights as LPTV stations, we conclude it is unlikely that Congress intended to remove these rights without specific mention in the CBPA.

4. Alternative Eligibility Criteria

44. Section (f)(2)(A) of the CBPA defines the eligibility criteria for Class A stations.⁹² Section (f)(2)(B) provides that a station may also qualify for Class A status if “the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.”⁹³ In the *Report and Order*, we said we would “allow deviation from the strict statutory eligibility criteria only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation.”⁹⁴ We gave as an example of such compelling circumstances “a natural disaster or interference conflict which forced the station off the air during the 90 day period before enactment of the CBPA.”⁹⁵ We also concluded that foreign language stations should have the same eligibility requirements as any other potential Class A station.⁹⁶

45. Entravision and Saga ask the Commission to establish eligibility criteria under Section (f)(2)(B) for

⁹¹ See, e.g., *Central Ohio Association of Christian Broadcasters, Inc. v. Time Warner Cable*, DA 00-2632, 2000 WL 1727376 (Chief, Consumer Protection and Competition Division, Cable Services Bureau) (rel. Nov. 22, 2000); *Complaint of V-One Productions, Inc. Against Charter Cable*, DA 00-1646, 2000 WL 1015240 (Chief, Consumer Protection and Competition Division, Cable Services Bureau)(rel. July 24, 2000); *Complaint of Vision 3 Broadcasting, Inc. Against Time Warner Cable*, DA 99-2683, 14 FCC Rcd 20,632 (Deputy Chief, Cable Services Bureau 1999); *Complaint of American Television, Inc. Against Charter Communications, LLC for Carriage of WSTY-LP, Hammond, Louisiana*, DA 99-1041 14 FCC Rcd 8842 (Chief, Consumer Protection and Competition Division, Cable Services Bureau 1999).

⁹² For the 90 days prior to enactment of the CBPA, an applicant must have (1) broadcast a minimum of 18 hours per day, (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, and (3) been in compliance with Commission requirements of LPTV stations. 47 U.S.C. § (f)(2)(A).

⁹³ 47 U.S.C. § 336(f)(2)(B).

⁹⁴ *Report and Order* at ¶ 33.

⁹⁵ *Id.* at ¶ 33.

⁹⁶ *Id.* at ¶¶ 33-35.

foreign language stations that do not meet the strict eligibility requirements in Section (f)(2)(A).⁹⁷ Saga contends that where an LPTV station provides foreign-language programming to a market where there is a significant population of people for whom that language is a first language, that station should qualify for Class A status without regard to other eligibility requirements. Alternatively, however, Saga proposes that the Commission should permit stations that fall short of one or more of the criteria set forth in Section (f)(2)(B) to nonetheless qualify for Class A status if they (1) provide a television service unique to the market, such as foreign language programs, and (2) commit to satisfy the statutory eligibility criteria within a short period of time.⁹⁸

46. We affirm our decision in the *Report and Order* that “foreign language stations should have the same eligibility requirements as any other potential Class A station.”⁹⁹ We recognize that foreign language stations provide a valuable service in providing access to national news and entertainment that might not otherwise exist for non-English speaking communities. In enacting the CBPA, however, Congress intended to preserve the service of a small class of existing LPTV stations that were providing a specified level of local programming to their communities.¹⁰⁰ To fulfill the intent of the statute, foreign language stations, like other potential Class A stations, must meet the local programming criteria to qualify for Class A status. We will not establish different criteria for foreign language stations that do not meet the local programming criteria.¹⁰¹ We also decline to establish alternative criteria under Section (f)(2)(B) for foreign language stations based on the foreign language nature of their programming.¹⁰² An applicant’s qualification for Class A status is not contingent upon whether it serves a particular audience, but upon whether it meets the eligibility criteria set out in Section (f)(2)(A) of the CBPA.

47. We also affirm our decision to allow deviation from the CBPA Class A eligibility criteria by waiver only where such deviations are insignificant or when compelling circumstances exist in individual cases.¹⁰³ We disagree with CBA and other petitioners who contend that Section (f)(2)(B) establishes a broad obligation independent of Section (f)(2)(A) under which the Commission may determine that other groups of LPTV stations may qualify for Class A status for public interest or any other reasons.¹⁰⁴ Congress intended to protect a small group of LPTV stations that were providing local programming.

48. CBA and other petitioners claim that various compelling circumstances prevented stations from qualifying under Section (f)(2)(A), such as serious owner illness,¹⁰⁵ destruction of facilities by storms,¹⁰⁶

⁹⁷ Entravision Petition at 1-5 (citing *Report and Order* at ¶ 34); Saga Petition at 4 (citing *Report and Order* at ¶ 34).

⁹⁸ Saga Petition at 6.

⁹⁹ *Report and Order* at ¶ 34.

¹⁰⁰ *Report and Order* at ¶ 34 (citing Section-by-Section Analysis at S14725).

¹⁰¹ Entravision Petition at 1-5 (claiming local programming production costs are high).

¹⁰² Saga Petition at 2-3 (arguing that it should be granted eligibility for Class A status by virtue of the unique range of services it provides to the Spanish-speaking community).

¹⁰³ CBA Petition at 2-5; Specialty Petition at 4-6; USAB Petition at 5-7.

¹⁰⁴ CBA Petition at 2-5; Saga Petition at 6-7; USAB Petition at 5-6.

¹⁰⁵ CBA Petition at 2-5.

construction of stations,¹⁰⁷ and being forced off the air by full power stations prior to completion of their displacement facilities.¹⁰⁸ RSN complains that the Commission has failed to open a filing window to allow LPTV stations to modify their facilities and become fully licensed, which, it claims, is inherently unfair.¹⁰⁹ Saga argues that its station's application should not have been dismissed, even though the station does not provide the requisite local programming.¹¹⁰ As we said in the *Report and Order*, parties with timely filed certificates of eligibility that demonstrated that deviations from the requirements were insignificant or that compelling circumstances existed were considered for Class A status under Section (f)(2)(B) on a case-by-case basis.¹¹¹

C. Class A Interference Protection Rights and Responsibilities

1. Protection of Pending NTSC TV Applications and Facilities

49. The CBPA requires that the Commission preserve the service areas of LPTV stations pending the final resolution of a Class A application.¹¹² We concluded in our *Report and Order* that that provision requires protection from the date of filing of an acceptable certification of eligibility for Class A status.¹¹³ With respect to NTSC facilities, Section (f)(7)(A) of the CBPA provides that the Commission may not grant a Class A license, nor approve a modification of license, unless the applicant shows that the proposed Class A station will not cause interference “within the predicted Grade B contour (as of the date of enactment of the ...[CBPA] ... or as proposed in a change application filed on or before such date) of any television station transmitting in analog format.”¹¹⁴ In our *Report and Order*, we interpreted this provision to require Class A stations to protect both existing analog stations and full-service applicants where the Commission has completed all processing short of grant necessary to provide a reasonably ascertainable Grade B contour. Specifically, we required Class A applicants to protect the predicted Grade B contour (as of November 29, 1999, or as proposed in a change application filed on or before that date) of full-power analog stations licensed on or before November 29, 1999. We also required Class A applicants to protect the Grade B contour of full-power analog facilities for which a construction permit was authorized on or before November 29, 1999. Finally, we required Class A applicants to protect the facilities proposed in any application for full-power analog facilities that was pending on November 29, 1999, for which the Commission had completed all processing short of grant as of that date, and for which the identity of the successful applicant was known. The applications in this latter category are post-auction applications, applications proposed for grant in pending settlements, and any singleton applications

¹⁰⁶ *Id.*

¹⁰⁷ CBA Petition at 2-5; Kelly Petition at 2-9.

¹⁰⁸ CBA Petition at 2-5; Specialty Petition at 2-4.

¹⁰⁹ RSN Petition at 7-9.

¹¹⁰ Saga Petition at 2.

¹¹¹ *Report and Order* at ¶ 33; CBA Petition at 2-5; USAB Petition at 6-7.

¹¹² 47 U.S.C. § 336(f)(1)(D).

¹¹³ *Report and Order* at ¶ 43.

¹¹⁴ 47 U.S.C. § 336(f)(7)(A)(i).

cut off from further filings. We did not require Class A applicants for initial Class A authorization to protect pending rule making petitions for new or modified NTSC channel allotments or full-service applications that were not accepted for filing by November 29, including most pending television freeze waiver applications.

50. WB and Davis argue that the Commission erred in construing the CBPA to protect some pending NTSC applications from Class A and not others. Davis states that the Commission properly found that the phrase “transmitting in analog format” in Section 336(f)(7)(A)(i) of the CBPA encompasses NTSC applicants, but contends there is no basis in the statute for discriminating between certain groups of NTSC applicants.¹¹⁵ WB argues that the *Report and Order* makes clear that the Commission found the phrase “transmitting in analog format” to be ambiguous. Therefore, according to WB, under the rules of statutory construction, if Congress intended to upset the Commission’s well-established regulatory scheme by giving LPTV stations priority over full-power television stations, it was required to do so through clear and unmistakable language. WB argues that in light of the ambiguous language in Section 336(f)(7)(A)(i) and Congress’ failure to express a clear intent to protect Class A applications from pending NTSC applications, there is no statutory basis for overturning the Commission’s longstanding regulatory framework and requiring pending NTSC applications to protect subsequently-filed Class A applications. In addition, KM contends that “equity demands” that the Commission protect from Class A interference long-pending analog allotment rulemaking petitions.¹¹⁶

51. Davis and WB also argue that it was inconsistent for the Commission to conclude that TV translator and LPTV applications are protected vis-à-vis Class A stations while full power applicants are not.¹¹⁷ In light of the explicit Congressional directive in the CBPA to protect pending LPTV and TV translator applications, these parties argue the Commission should have concluded Congress intended to protect all pending applications for full-service stations as well, because these stations provide substantially greater public interest benefits.¹¹⁸

52. Finally, WB argues that it was arbitrary for the Commission to decline to protect pending NTSC applications that have not achieved “cut off” status when the Commission itself declined to lift the DTV “freeze” and process freeze waiver applications during the 18 month period between finalization of the DTV Table of Allotments and adoption of the CBPA.¹¹⁹ According to WB, the Commission should have at least determined the effect that the pending NTSC applications would have on potential Class A stations. WB contends that there may be sufficient spectrum to incorporate Class A stations into the Commission’s existing regulatory framework without effectively depriving NTSC stations of their primary service status.¹²⁰ WB proposes that where there is a conflict between a Class A application or station and a pending NTSC proposal, and the parties are unable to enter into an interference or relocation agreement

¹¹⁵ Davis Petition for Reconsideration at 3-4.

¹¹⁶ KM Petition for Reconsideration at 12-13.

¹¹⁷ *Id.* at 6.

¹¹⁸ WB Petition for Reconsideration at 5-6. Davis Petition for Reconsideration at 4.

¹¹⁹ According to WB, the Commission stated that its DTV implementation plan was “finalized” in its reconsideration order in the DTV *Sixth Report and Order* and the related *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*. WB Petition for Reconsideration at 8.

¹²⁰ WB Petition for Reconsideration at 9.

as contemplated by the *Report and Order*, the Commission should permit the NTSC proponent (*i.e.*, applicant or allotment rulemaking petitioner) to force the Class A applicant/station to move to a suitable alternative channel (including frequency offset).¹²¹

53. We disagree with WB and Davis that our decision to protect the delineated categories of pending NTSC applications is inconsistent with either the language of the CBPA or the underlying intent of Congress. Section 336(f)(7)(A)(i) of the statute requires Class A applicants and licensees to protect “the predicted Grade B contour (as of...[November 29, 1999], or as proposed in a change application filed on or before such date)” of analog facilities.¹²² Thus, Class A stations must protect the predicted Grade B contour of analog stations licensed or granted a construction permit as of November 29, 1999, as well as of facilities proposed in certain pending analog applications. As we noted in the *Report and Order*, the phrase “predicted Grade B contour” is singular. WB’s assertion that the phrase “transmitting in analog format” is ambiguous is not relevant to our interpretation of the separate phrase “predicted Grade B contour.” We continue to believe that this latter phrase, as modified by the parenthetical in Section 336(f)(7)(A)(i), limits the facilities proposed in applications pending as of November 29, 1999 that must be protected by Class A stations to those for which there is a single, reasonably ascertainable predicted Grade B contour as of that date. These applications consist of post-auction applications, applications proposed for grant in pending settlements,¹²³ and any singleton applications cut off from further filing. The applications in each of these categories have progressed through the cut-off stage and the identity of the successful applicant in each case has been determined. Class A applicants can identify a single predicted Grade B contour with respect to these applications for which protection must be afforded and are not required to show that they will not interfere with multiple, hypothetical contours that may not turn out to be actual contours, if the applicant in question does not ultimately receive the station license.

54. This interpretation is consistent with both the language of Section 336 (f)(7)(A)(i) and with the intent of Congress as expressed in the overall statutory scheme. Throughout the CBPA, Congress attempted to balance the enhanced rights it conferred on Class A stations against those of full service stations in light of the limited spectrum available. Requiring Class A applicants to protect applications that have progressed through the cut-off stage strikes an appropriate balance between the rights of pending NTSC applicants and the interests of LPTV stations seeking primary status. Applicants that have prosecuted their applications through the cut-off stage and to the point that the identity of the successful applicant is known have in most cases invested substantial resources in filing and prosecuting their applications. Most of these applications have been pending for some time, and LPTV stations affected by the facilities proposed in these applications have long been on notice that they would ultimately be displaced or be required to reduce their facilities. Requiring Class A applicants to protect applications that had progressed through this stage by November 29, 1999 is both equitable and a reasonable reading of the CBPA.

¹²¹ *Id.* at 16-19.

¹²² Davis asserts that the Commission correctly interpreted the phrase “transmitting in analog format” in Section 336(f)(7)(A)(i) to refer to the nature of the service entitled to protection (*i.e.*, analog) rather than to its operational status on the date of enactment of the CBPA. Davis Petition for Reconsideration at 2-3. WB does not challenge this aspect of the Commission’s interpretation of 336(f)(7)(A)(i) in its Petition for Reconsideration. Thus, these parties do not contest the Commission’s determination that the analog station entitled to protection under the CBPA could be licensed, one for which an application is currently pending, or one for which a construction permit has been granted but which is not yet built.

¹²³ *But see* ¶ 57.

55. We disagree with WB's contention that there may be sufficient spectrum to allow protection of all pending NTSC applications as well as LPTV stations seeking to convert to Class A status. We estimate that there are still pending before the Commission applications that may account for approximately 180 potential new NTSC stations. The grant of this number of new full service stations would likely displace a significant number of LPTV stations, many of which would be unlikely to be able to successfully locate replacement spectrum within the core. In light of the primary intent of the CBPA to protect those presently operating LPTV stations that can qualify under the statute, we conclude that our interpretation of Section 336(f)(7)(A)(i) appropriately balances the rights of these stations against those of pending NTSC applicants.

56. We also decline to require Class A applicants to protect pending analog allotment petitions for rulemaking, as KM supports. The CBPA does not contemplate protection of these petitions. Moreover, although rulemaking petitions contain certain information identifying the coordinates, channel, and class of the facilities the petitioner seeks to establish, the petitioner may not ultimately be the successful applicant for these facilities and the facilities specified in the successful application may, and often do, differ from what was proposed in the rulemaking petition. Thus, rulemaking petitions do not specify facilities such that there is a reasonably ascertainable Grade B contour for Class A stations to protect. Under these circumstances, we continue to believe that Congress intended that qualified LPTV stations be accorded priority over pending conflicting rulemaking petitions.

57. With respect to applications for which a settlement is pending as of the date of enactment of the CBPA, we clarify that where such a settlement includes a channel change, and the application for the channel change has not been accepted for filing with the Commission, we will treat that channel change application in the same way as any other pending NTSC application for purposes of determining priority *vis a vis* Class A.¹²⁴ Thus, where a pending settlement depends upon a channel change which has not been accepted for filing by the Commission, and that new channel proposal conflicts with the protected facilities of a Class A-certified LPTV station, the settlement will not be protected.¹²⁵

58. We will not adopt WB's proposal to permit an NTSC applicant or petitioner for allotment rulemaking to force a Class A applicant or station to move to an alternative channel. Under WB's proposal, in all instances of interference between a Class A and a full-service applicant or station, it is the Class A applicant or station that would be required to make the necessary accommodations to resolve the interference conflict. WB does not propose that the NTSC applicant or station have any reciprocal obligation to change its channel or transmitter location in order to protect the Class A applicant or station from interference. We believe that such a one-way mandatory accommodation is fundamentally unfair to Class A applicants and stations, and is inconsistent with Congress' intent to afford primary service protection to eligible LPTV stations.

59. The fact that the CBPA explicitly protects all low power and translator applications from Class A

¹²⁴ The issue of the treatment of settlements entered into prior to November 29, 1999 involving a channel change was raised by KM in an *ex parte* presentation in this docket. See Ex Parte Memorandum to Magalie Roman Salas, Secretary, FCC from Kenneth E. Hardman, October 25, 2000.

¹²⁵ We recognize that, in *Achernar*, the Commission approved a settlement agreement and channel change notwithstanding a potentially conflicting Class A certification of eligibility where the channel change was made by the Commission on its own motion. However, the facts presented in that proceeding were unusual and the equities favoring the applicants were "extraordinary." *Memorandum Opinion and Order, Applications of Achernar Broadcasting Company and Lindsay Television for Construction Permit for a New UHF TV Station on Channel 64 at Charlottesville, Virginia*, MM Docket No. 86-440, 15 FCC Rcd 7808, 7815 (2000).

interference does not require similar treatment of pending full power NTSC applications. If Congress had intended identical treatment of LPTV, translator, and full power NTSC applications, it could have used the same clear statutory language in Section 336(f)(7)(B) to refer to all of these groups of applicants.¹²⁶ That Congress did not do so supports the Commission's conclusion that NTSC applicants were not granted the same level of protection against Class A interference.

60. Finally, we disagree with WB's contention that it is arbitrary for the Commission to decline to protect pending NTSC applications when we could have processed some of those applications prior to enactment of the CBPA. The Commission's DTV freeze was necessary to allow development of a DTV Table of Allotments to initiate the transition to digital television. Applications filed prior to or regardless of the freeze had no vested right to processing. The DTV Table did not protect the pending freeze waiver applications, and many had conflicts with the Table. Accordingly, from November 1999 to July 2000, we opened a window to allow these applicants an opportunity to cure the conflict. We are currently processing applications and rule making petitions filed during this window. Moreover, our freeze did not preclude applicants from entering into universal settlements that might protect these applications from Class A interference under the CBPA and our *Report and Order*.

2. DTV Maximization and Allotment Adjustments

61. The CBPA provides that a Class A application for license or license modification may not be granted where the proposal would interfere with DTV stations seeking to "maximize power" under the Commission's rules, for those stations that complied with the notification requirements of Section (f)(1)(D) of the statute.¹²⁷ Section (f)(1)(D) requires that, to be entitled to protection by Class A applicants, DTV stations were required to have filed an application for maximization or a notice of intent to seek maximization by December 31, 1999, and have filed a bona fide application for maximization by May 1, 2000.¹²⁸ Approximately 370 DTV maximization applications were filed in accordance with that statutory deadline. In the *Report and Order*, we interpreted the use of the term "maximization" in the statute to refer to power and/or antenna height increases above the values given in the DTV Allotment Table, and to site changes that would extend the service area of DTV facilities beyond a station's NTSC replication facilities.¹²⁹

62. The CBPA provided an exception to the provision for preservation of the service areas of Class A-certified LPTV stations. According to Section (f)(1)(D), if, thereafter, "technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary (i) to ensure replication of the full-power digital television applicant's service area...and (ii) to permit maximization of a full-power digital television applicant's service area..." (if the applicant complied with

¹²⁶ Section 336(f)(7) states, in part: "(7) NO INTERFERENCE REQUIREMENT.—The Commission may not grant a class A license, nor approve a modification of a class A license, unless the applicant or licensee shows that the class A station for which the license or modification is sought will not cause. . . (B) interference within the protected contour of any low-power television station or low-power television translator station that. . .".

¹²⁷ 47 U.S.C. § 336 (f)(7)(A)(ii)(IV).

¹²⁸ 47 U.S.C § 336 (f)(1)(D).

¹²⁹ *Report and Order* at ¶¶ 51-60.

the notification and application requirements established by that section).¹³⁰

63. As we indicated in the *Report and Order*, the statutory language is somewhat ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. Although Section (f)(1)(D) appears to tie replication and maximization to resolution of technical problems, Section (f)(7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements of (f)(1)(D), without reference to any need to resolve technical problems on the part of the DTV station. Despite the reference in section (f)(1)(D) to technical problems, we concluded in the *Report and Order* that it was most consistent with the statutory schemes for both Class A LPTV service and digital full-service broadcasting to require Class A stations to protect all DTV stations seeking to replicate or maximize facilities, as provided in section (f)(7)(A)(ii), regardless of the existence of “technical problems,” provided stations seeking to maximize complied with the notification requirements of (f)(1)(D) of the statute.¹³¹ We interpreted section (f)(1)(D) as providing DTV stations with the flexibility to make adjustments to the facilities proposed in these maximization applications, including channel changes, where necessary to resolve technical problems that prevented implementation of the facilities proposed therein.¹³² Consistent with this statutory interpretation, we also provided that the maximized service areas resulting from timely filed maximization application proposals could be carried over to a DTV stations’ final in-core DTV channels, such as a station’s in-core analog channel, to the extent the in-core channel facilities for maintaining the maximized service area would provide the required protection to other DTV stations.¹³³ Such maximized facilities on post-transition channels will have priority over conflicting Class A facilities.

64. KM contends that the Commission erred in defining the term “maximization.” to include facilities changes other than an increase in effective radiated power beyond a station’s allotted DTV power.¹³⁴ We disagree that the CBPA limits the maximized service areas to be protected by Class A station applicants to those resulting from increased effective radiated power. Section (f)(7)(A)(ii)(IV) states that Class A applicants must protect DTV proposals “seeking to maximize power under the Commission’s rules...”¹³⁵ The legislative history of the CBPA defines maximization in terms of its use in Paragraph 31 of the Commission’s DTV Sixth Report and Order, which references both increases in power and antenna height beyond allotted values.¹³⁶ We continue to believe that the term “maximization,” as used in the CBPA, is best interpreted to include power, antenna height and/or site changes, or combinations thereof, that extend the service area of DTV facilities beyond the NTSC replication facilities. We concluded that such a broad interpretation of the statute was consistent with the CBPA’s emphasis on protecting the

¹³⁰ 47 U.S.C. § 336(f)(1)(D).

¹³¹ *Report and Order* at ¶ 53.

¹³² *Id.* at ¶ 63.

¹³³ *Id.* at ¶¶ 58 – 60.

¹³⁴ KM Petition at 5.

¹³⁵ 47 U.S.C. § 336(f)(7)(A)(ii)(IV).

¹³⁶ Section-by-Section Analysis at 14725. *See also* DTV Sixth Report and Order, MM Docket No. 87-268, 12 FCC Rcd 14588 (1997).

digital transition.¹³⁷ For instance, Section (f)(1)(D)(ii) of the statute provides for necessary allotment adjustments “to permit maximization of a full-power digital television applicant’s service area consistent with Sections 73.622 and 73.623 [of the Commission’s Rules].¹³⁸ Section 73.622(d) permits and protects the DTV service areas extended through site changes.¹³⁹ Congress provided DTV stations an opportunity to maximize service on a priority basis to Class A stations. In so doing, we do not believe that it intended to preclude protection to service areas shifted by desired DTV site relocations; for example, relocation to a broadcast antenna farm, where the station may be able to better serve its community. We therefore affirm our definition of DTV maximization with regard to Class A interference protection requirements.

65. CBA raises an issue regarding the maximum power that is allowed for a DTV maximization application. Specifically, CBA asserts that DTV “supermaximization” applications have been filed in the Scranton -- Wilkes-Barre, Pennsylvania market that exceed the effective radiated power (“ERP”) allowed by Section 73.622 of our rules. That rule includes tables and formulas for determining maximum power at various antenna heights, as well as a provision that allows greater facilities if necessary to provide the same coverage as the largest station in the market.¹⁴⁰ CBA urges that DTV stations exceeding maximum power should not be permitted to displace Class A stations. If an individual DTV application presents special issues, they can be addressed by parties filing informal objections to that application, which the Commission would consider before acting on the application.

66. KM argues that the *Report and Order*¹⁴¹ fails to make the proper distinction between the maximization provisions in Sections (f)(1)(D) and (f)(7)(A)(ii)(IV) of the CBPA.¹⁴² It is therefore concerned that our reading of the statute would overly broaden the ability of DTV stations to continue maximizing facilities, even after May 1, 2000, at the expense of Class A stations. According to KM, under the CBPA “Class A stations do gain some limited primary status protection against future interference from further DTV station proposals to change their facilities, unless the DTV station can demonstrate under Section 336(f)(1)(D) that a change that would adversely effect a Class A station is warranted by the requisite ‘technical problem’.¹⁴³ We agree with KM to the extent described below, but disagree that we misconstrued the statute. As explained in the *Report and Order*, Section (f)(7)(A)(ii)(IV) of the statute requires Class A station protection of the DTV service areas gained through the maximization proposals that met the notification requirements of Section (f)(1)(D); that is, facilities proposals meeting the December 31, 1999 notification and May 1, 2000 application filing deadlines. The statute affords Class A stations a protection priority over subsequently filed proposals to further enlarge or extend DTV service areas. Section (f)(1)(D)(ii) provides for technically necessary adjustments to DTV allotment parameters, including channels, to permit the maximization of the DTV service areas resulting from application proposals meeting the above filing deadlines. A DTV broadcaster who met the above filing deadlines is

¹³⁷ *Report and Order* at ¶ 53.

¹³⁸ 47 U.S.C. § 336(f)(1)(D)(ii); 47 C.F.R. §§ 73.622, 73.623.

¹³⁹ 47 C.F.R. § 73.622(d).

¹⁴⁰ 47 C.F.R. § 73.622(f)(5). This rule was recently clarified in the *Report and Order and Further Notice of Proposed Rule Making* in MM Docket No. 00-39, FCC 01-24 (rel. Jan. 19, 2001).

¹⁴¹ *Report and Order* at ¶ 53.

¹⁴² KM Petition at 3-7. *See also* CBA Petition at 7 and IBN Petition at 2-3.

¹⁴³ KM Petition at 7.

entitled to Class A protection of its maximized service area. Section (f)(1)(D) directs broadcasters to “comply with all applicable Commission rules regarding the construction of digital television facilities.”¹⁴⁴ Subsequently, if there is a technical problem, the statute enables the broadcaster to seek adjustments to its allotment parameters necessary to serve that already maximized area. If, for example, the broadcaster changed its DTV channel, Class A stations would be required to protect service within that area on the new channel. However, the broadcaster would not be entitled to a protection priority over Class A stations in any area beyond that resulting from its earlier filed maximization proposal (May 1, 2000). We continue to believe that this interpretation of the CBPA is most consistent with the statutory schemes for both Class A and full-service digital television stations.

67. Sonshine Family Television, Inc. (“Sonshine”) raises another DTV maximization issue. Sonshine is one of the few full service TV stations that operate their NTSC station on a channel outside of the core and also have been assigned a DTV channel that is outside of the core (NTSC channel 60 and DTV channel 59 in Bethlehem, Pennsylvania). Sonshine requests that stations in this situation be allowed to maximize when they move to their eventual in-core channel with protection from Class A station interference and also be allowed to displace Class A stations.¹⁴⁵ Sonshine urges that these stations should be allowed this status even if they do not maximize their out-of-core DTV operation. Sonshine suggests that the CPBA is ambiguous and internally inconsistent on the maximization application requirement, giving the Commission discretion to interpret and balance the competing interests on this issue. Sonshine claims it would be inequitable to require stations in its situation to make additional expenditures to maximize temporary facilities and that such early maximization would not benefit Class A licensees because they could not determine what channels will be available for assignment to out-of-core DTV stations at the end of the transition. We disagree that an inequitable balance has been struck. Out-of-core DTV stations seeking to replicate their NTSC service area on their assigned in-core channel will be allowed to displace Class A facilities when they move to their in-core channel. We are only dealing here with the ability of such DTV stations to increase their coverage at that time at the expense of displacing Class A stations.¹⁴⁶

In circumstances where this displacement occurs, this will be a very real burden on the Class A station. To avail themselves of this opportunity for the right to displace additional Class A stations, we continue to believe it is reasonable to require more than a mere notification of intent to maximize. The balance we struck in the *Report and Order* regarding the rights of Class A and stations with out-of-core NTSC and DTV channels may involve additional expenses to Sonshine and other similarly situated broadcasters. Yet, we continue to believe that this balance is both consistent with and compelled by the CBPA.¹⁴⁷

68. CBA contends that the *Report and Order* violated the CBPA by permitting full-service DTV broadcasters to seek facilities changes or allotment adjustments that would interfere with Class A stations, without first being required to demonstrate that a modification proposal adversely affecting a Class A station would be the only way to solve a technical problem.¹⁴⁸ It states that requiring displaced Class A stations “to bear the costs of determining alternative modification proposals [for DTV stations]

¹⁴⁴ 47 U.S.C. § 336(f)(1)(D).

¹⁴⁵ Sonshine Petition at 1-7.

¹⁴⁶ Class A stations will be required to protect the NTSC-replicated service area of such DTV stations on their assigned in-core channel, but will benefit by their protection from service maximization by DTV stations that did not meet the statutory requirements for maximizing service on their out-of-core channels.

¹⁴⁷ *Report and Order* at ¶¶ 58 – 59.

¹⁴⁸ CBA Petition at 9.

contravenes the stated policy of protecting the capital investments and status of Class A service.”¹⁴⁹ We agree with CBA that Section (f)(1)(D) permits Class A displacement only when the modification or DTV allotment adjustment is necessary to resolve a technical problem. In this regard, we will require stations seeking adjustments to the facilities or allotment proposed in maximization applications, which adjustment would affect Class A stations or Class A-eligible LPTV stations, to show that the adjustment is technically necessary. However, we disagree with CBA that a DTV station should be required to show that its proposal is the only way to solve the problem. Neither the CBPA, nor its legislative history compels such a policy. We believe the transition to DTV is strengthened by affording full-service broadcasters flexibility in developing engineering solutions to technical problems. Our DTV rules and licensing process are designed to afford flexibility to DTV broadcasters in order to ease the DTV transition. For example, DTV facilities may be located within 5 kilometers of allotted sites under our streamlined “check list” application process and may operate with less than fully allotted facilities. DTV broadcasters may also exchange allotments with other broadcasters in the same or adjacent markets outside of allocation proceedings. Even with this flexibility, there may be situations in which it would be difficult and costly for a broadcaster to find a solution or partial solution to a complex interference and/or signal coverage problem. We are sensitive to the substantial costs and other difficulties faced by displaced stations. Yet, given the paramount importance of the DTV transition, we will not, as a matter of policy, place additional burdens on DTV broadcasters by forcing them to expend their resources exploring alternative solutions to technical problems. However, as we noted in the *Report and Order*, we may question certain modification requests that would unnecessarily impinge on Class A service.¹⁵⁰ Class A station entities may bring such situations to the Commission’s attention through our normal application and allotment processes.

D. Methods of Interference Protection to Class A Facilities

1. Analog Full-Service TV Protection to Analog Class A – Frequency Offset

69. The *Report and Order* permitted Class A stations to operate without a carrier frequency offset.¹⁵¹ We noted, however, that offset operations allow more efficient use of broadcast spectrum, and we encouraged Class A stations to operate on this basis. Although we did not require a carrier offset as a condition for an initial Class A authorization, we did require Class A licensees seeking facilities increases to specify an offset in their modification applications.¹⁵²

70. Mid State Television, Inc. (“Mid State”) and KM request that we require Class A stations to operate with a carrier offset, at least if another station benefiting from that station’s offset conversion agrees to pay the related expenses.¹⁵³ Mid State specifically requests that we require LPTV and Class A stations to use a carrier offset where this change would allow another Class A-eligible station to move into

¹⁴⁹ *Id.*

¹⁵⁰ *Report and Order* at ¶ 64.

¹⁵¹ *Id.* at ¶¶ 26, 68. Frequency offsetting involves shifting the visual carrier frequency from its nominal position of 1.25 MHz from the lower edge of a TV channel. Standard offsets are of 10 kHz above the nominal frequency (plus offset), 10 kHz below (minus offset) or no shift (zero offset).

¹⁵² A carrier offset was not required for applicants who could demonstrate that it would not be possible to realize the efficiencies of offset operations because neighboring co-channel stations were using all available offsets.

¹⁵³ KM Petition at 11-12; Mid State Petition at 1-4.

the broadcast core spectrum (channels 2-51) and will not cause substantial interference. It suggests the following procedure for this proposal. The requesting party would attempt to reach an offset agreement with the other affected station. If no agreement could be reached within 30 days, the requesting station would be permitted to file its applications for channel displacement relief and a Class A authorization. The applicant would explain its attempts to reach agreement, request that the affected station be required to change to an offset, and express its willingness to pay all related expenses. The application filing would be sent to the affected station, which would be given the opportunity to file comments. If the Commission were to agree with the requesting station, it would grant the displacement application and direct the affected station to change to an offset. The affected station would be required to file its offset application within 30 days of the Commission directive. Mid State, a Class A-eligible LPTV station, indicates that it would benefit from such a procedure. Its intended use of a replacement channel is encumbered by predicted interference to a co-channel LPTV station, that this conflict would be eliminated if the other station operated with a carrier offset, and that that station has been unwilling to enter into an offset agreement, even if Mid State were to pay “all reasonable expenses.”¹⁵⁴

71. We recognize that Class A-eligible LPTV licensees such as Mid State may be prevented from operating Class A stations because of interference conflicts that could be avoided if other stations operated with suitable carrier offsets. Two stations operating on the same channel, but with different frequency offsets, may be located much closer together with no additional interference potential than if one or both of the stations operated without a carrier offset or the stations used the same offset.¹⁵⁵ As such, offset operation could greatly facilitate the efforts of displaced stations to find suitable replacement channels.

72. Therefore, we are persuaded to modify our decisions in the *Report and Order* regarding use of carrier offsets by Class A station entities. Requiring use of carrier offsets will provide for greater spectrum efficiency by making room for more new LPTV or Class A stations and/or by allowing more existing stations to increase facilities. First, we will require that, within nine months of the date of release of this *Memorandum Opinion and Order*, all Class A station licensees operate with a carrier offset. Within that time period, we will also require that Class A construction permits and pending applications for such permits be modified or amended to specify a carrier offset.¹⁵⁶ To do so, station licensees, permittees, and applicants shall specify the carrier offset in a letter to the Commission staff, referencing their license, permit, or pending application. Class A stations operating with an offset must meet the +/- 1 kilohertz frequency tolerance requirements of Section 73.1545 (c) of the Commission’s Rules.¹⁵⁷ We understand that most stations not currently operating with an offset could readily do so at modest cost by modifying

¹⁵⁴ Mid State Petition at 2.

¹⁵⁵ This is because the required desired-to-undesired co-channel signal strength ratio of 45 dB for non-offset operations is reduced to 28 dB for stations operating with different carrier offsets. Consider, for example, two co-channel UHF LPTV stations radiating 10 kW of power at antenna heights above average terrain of 152 meters (500 feet). In order to meet the LPTV signal protection requirements for non-offset operations, these stations must be geographically separated by at least 165 kilometers. The separation is substantially reduced to 84 kilometers if the stations operate on different carrier offsets.

¹⁵⁶ Class A-eligible LPTV stations currently authorized on channels 52 – 69 will be required to specify a carrier offset in displacement relief applications seeking “core” replacement channels filed more than nine months after release of this *Memorandum Opinion and Order*.

¹⁵⁷ 47 C.F.R. § 73.1545(c). This frequency tolerance is necessary to maintain the frequency offset relationship.

their existing transmitters.¹⁵⁸ A small number of stations may have to obtain new transmitters equipped for offset operation. With regard to offset conversion, we will not impose the transmitter equipment performance requirements of Section 73.1590 of our rules. However, stations converting to offset or changing their offset will be required to measure the visual carrier frequency and the difference between the aural and visual carriers to determine compliance with the requirements of Section 73.1545(c). This data must be kept on file at the transmitter or remote control point, and be made available upon request to authorized Commission representatives.

73. Second, we will require all Class A stations or Class A-eligible LPTV stations seeking facilities increases to specify a carrier offset in their modification applications, regardless of whether the advantages of offset operation can be realized with respect to all neighboring co-channel stations. As noted above, such a requirement will improve spectrum efficiency generally for new as well as existing stations.

74. Finally, until the time at which all Class A entities are required to specify use of a carrier offset, we may, on a case-by-case basis, direct Class A station licensees, permittees and Class A-eligible LPTV applicants (“affected stations”) to operate their stations with a carrier offset at the request of a displaced Class A station, displaced Class A-eligible LPTV station, or applicant or allotment petitioner for a new NTSC television station (“requesting stations”). In this regard we will generally proceed along the lines suggested by Mid State. The requesting party must first attempt to negotiate a voluntary offset agreement with the affected Class A entity.¹⁵⁹ Such agreements should be included with the applications of the requesting station and offset notification of the affected station. The Commission staff will process the related applications and offset notifications in a coordinated manner. In the event a voluntary agreement cannot be reached, the requesting station may file (or amend) its application, despite the interference conflict with the affected station.¹⁶⁰ The application must set forth the requesting station’s efforts to reach agreement with the affected station and request that the affected station be directed to specify a carrier offset. A copy of the application (or amendment to a pending application) must be sent to the affected station, which will be given 30 days to file comments. If the requesting station’s application is otherwise acceptable (that is, except for the conflict with the affected station), the Commission staff may direct the affected station to file within 30 days a letter notification specifying a particular carrier offset. It will process the related applications and offset notifications in a coordinated manner.¹⁶¹

¹⁵⁸ The engineering consulting firm of du Treil, Lundin & Rackley, Inc. (“dLR”) suggests that, based on its inquiries to LPTV transmitter manufacturers, the conversion costs would range from \$500 to \$2500 depending on the transmitter. Comments of dLR to the *Notice of Proposed Rule Making* in this proceeding, appended to the Mid State Petition at 4.

¹⁵⁹ Class A station licensees, permittees and applicants are permitted to enter into interference and/or relocation agreements between affected parties, which may include monetary compensation from one station to another. Such agreements will be approved if the Commission finds that the public interest would be served. *Report and Order* at ¶ 75.

¹⁶⁰ If applicable, an LPTV displacement application (FCC Form 346) should be accompanied by an application for an initial Class A authorization (FCC Form 302-CA).

¹⁶¹ The affected station may be a Class A-eligible LPTV station, which has yet to file its application for an initial Class A authorization. In that event, matters relating to the required use of a carrier offset by that station will be set aside until it files its Class A application. Until that time, or until expiration of the time for filing initial Class A applications, processing of the displacement application of the requesting station will be suspended, with the application retaining its cutoff rights. *See* 47 C.F.R. § 73.3572.

75. This Class A proceeding has not addressed carrier offset issues with regard to television translator and non-Class A LPTV stations. Therefore, the above provisions do not, as a matter of policy, apply to these stations. Many translators and LPTV stations do not operate with a frequency offset. Channel displacement among LPTV and translator stations has been extensive. The difficulties faced by translator and LPTV licensees, including Class-A eligibles, in finding replacement channels could be lessened if translators and LPTV stations operated with carrier offsets. We strongly encourage such stations to enter into voluntary offset agreements, particularly where this would accommodate use of a replacement channel by a displaced station. On a case-by-case basis, we reserve the right to modify the license of a TV translator or non-Class A LPTV station subject to the provisions of the Communications Act of 1934, as amended.¹⁶²

2. Alternative Means of Interference Protection

76. In the *Report and Order*, we concurred with commenters who favor permitting Class A stations to enter into interference or relocation agreements with full-service, LPTV, TV translator and other Class A licensees, permittees or applicants. We required agreements to be submitted with the related applications for initial or modified broadcast facilities. We said we would approve of such agreements if we find them to be consistent with the public interest.¹⁶³

77. We reaffirm our decision in the *Report and Order*. We disagree with WB's suggestion that we adopt a new procedure to resolve conflicts between pending NTSC proposals and Class A applications similar to that used in FM allotment cases. We do not believe that, in those instances where the parties are unable to reach agreement, an applicant or petitioner for a new NTSC station should be able to require a Class A station to move to a "suitable" alternative channel. Nor do we believe that the Commission should be limited in its involvement -- if intervention is necessary -- to issuing an order to show cause requiring the Class A station to demonstrate why its authorization should not be modified to specify operation on the new channel.¹⁶⁴ Such action would be inconsistent with the interference protection provision, adopted in the *Report and Order* regarding Class A protection to pending proposals for new NTSC TV stations.¹⁶⁵ As we stated in the *Report and Order*, we will approve interference or relocation agreements between Class A applicants and applicants for full-service television stations, provided we find the agreements to be consistent with the public interest.¹⁶⁶

E. Methods of Interference Protection By Class A to Other Facilities

1. Grandfathering of LPTV Interference Waivers

78. In the *Report and Order*, we adopted interference protection requirements for Class A applicants, as directed by the CBPA.¹⁶⁷ These require protection to certain authorized and proposed

¹⁶² See 47 U.S.C. § 316.

¹⁶³ *Report and Order* at ¶¶ 74-75.

¹⁶⁴ WB Petition at 16-19 (citing *Report and Order* at ¶ 75); Davis Opposition at 7 (citing WB Petition at 16-19).

¹⁶⁵ *Report and Order* at ¶¶ 44-48.

¹⁶⁶ *Report and Order* at ¶ 75.

¹⁶⁷ *Report and Order* at ¶¶ 76-84; 47 U.S.C. § 336 (f)(7).

NTSC TV, DTV, LPTV and TV translator and land mobile radio services. Applicants for Class A authorizations must certify in their applications that their proposed facilities comply with the applicable interference protection requirements in the Commission's Rules.

79. KM asks that we clarify that all existing waivers of LPTV station interference protection requirements to other stations are "grandfathered" upon an LPTV station's conversion to Class A status.¹⁶⁸ At issue are waivers of the LPTV application acceptance standards for interference protection.¹⁶⁹ For instance, KM notes that waivers should be permitted where an applicant can show that its proposed facilities would produce no new areas of interference within a full power TV station's service area. As requested and to guide applicants for initial Class A authorizations, we provide the following clarification. Existing waivers of the LPTV station interference protection requirements may be used as a basis for certifying compliance with the Class A interference protection requirements provided: (1) construction of the facilities for which Class A status is sought was authorized on the basis of a waiver of the interference standards with respect to a protected station; (2) all engineering parameters under that LPTV authorization remain unchanged; (3) all authorized engineering parameters of the protected station associated with the waiver remain unchanged; and (4) the LPTV licensee has no knowledge that its station is causing interference to the reception of the protected station within its protected service area; e.g., Grade B contour for NTSC TV stations. We also reiterate that any interference from existing LPTV facilities within the protected contour of later authorized or proposed LPTV or TV translator facilities is permitted by the LPTV rules and is also grandfathered.¹⁷⁰

2. Land Mobile Radio Service and TV Channel 16

80. The CBPA, at Section (f)(7)(C), provides that the Commission may not authorize a Class A station that will cause interference to certain land mobile radio uses of television channels.¹⁷¹ In the *Report and Order*, we stated that it is most consistent with the statutory scheme and the waiver granted for public safety land mobile use of Channel 16 in the New York City metropolitan area that LPTV station WEBR-LP and the New York police and public safety agencies continue to cooperate to ensure that neither party interferes with the other's transmission. We added that this agreement between the parties would be included in the record of any application filed by WEBR-LP to become a Class A television station.¹⁷² In its comments, the New York Metropolitan Advisory Committee (NYMAC) requests that WEBR-LP's authority to operate as a Class A station be subject to the parties' agreement.¹⁷³ WEBR-LP filed a Class A application on July 27, 2000. Pursuant to our decision in the *Report and Order*, because the application reflected the parties' commitment to the agreement, the Mass Media Bureau granted the application on August 21, 2000 and did not impose a condition that WEBR-LP's authority to operate as a

¹⁶⁸ KM Petition at 7.

¹⁶⁹ See, for example, 47 C.F.R. § 74.705. LPTV stations have never been granted waivers permitting them to interfere with full-service TV stations. However, the interference prediction standards may be waived where applicants can demonstrate that conditions exist that would prevent interference; for example, terrain shielding.

¹⁷⁰ *Report and Order* at ¶ 81.

¹⁷¹ 47 U.S.C. § 336(f)(7)(C).

¹⁷² *Report and Order* at ¶¶ 82-84.

¹⁷³ NYMAC Petition at 3.

Class A station be subject to the agreement.¹⁷⁴ We see no reason to revisit that determination.

F. Remaining Issues

1. Issuance of DTV Licenses to Class A, TV Translator, and LPTV Stations

81. In the *Report and Order*, we noted that Class A stations may convert their existing channel to digital broadcasting at any time.¹⁷⁵ We also concluded that the plain reading of the CBPA, as well as its legislative history, does not require us to issue an additional license for DTV services to Class A or TV translator licensees, but does require us to accept DTV applications from licensees of Class A or TV translator stations that meet the interference protection requirements set forth in the statute.¹⁷⁶ We noted in the *Notice* in this proceeding that interpreting the statute to require mandatory authorization of a paired channel for DTV for a Class A station could create an unfair advantage for Class A stations over certain full service stations. Some full service stations, we said, do not have a paired channel because they received construction permits after the eligibility cutoff date for receiving initial paired DTV licenses. Recognizing that a number of outstanding issues regarding the transition to DTV must be resolved, we said we would defer matters regarding the issuance of additional DTV licenses for Class A stations to a future DTV rulemaking.¹⁷⁷

82. We reaffirm our decision in the *Report and Order*. Contrary to CBA's assertion that the CBPA mandates awarding a second DTV channel to Class A stations,¹⁷⁸ the statute simply requires that we "shall accept a license application for such services" that meet certain interference protection requirements. Nothing in the statute requires that we assign a second DTV channel to Class A stations. As we indicated above, a Class A station may convert its existing channel to digital broadcasting at any time, or it may compete with other interested parties for additional channels for DTV.¹⁷⁹ Thus, our reading of the statute is not inconsistent with Congressional intent that Class A stations be able to provide digital service, as one party suggests.¹⁸⁰

83. As we said in the *Report and Order*, we must exercise restraint with respect to issuing additional DTV licenses in order to preserve spectrum to accommodate needs associated with the transition of full-service stations to digital service. For instance, in our DTV periodic review proceeding we expressed our belief that more out-of-core stations than initially anticipated must be accommodated with in-core channels and that this effort will be made more difficult because there are more stations occupying core channels than initially planned for.¹⁸¹ We therefore defer matters regarding the issuance of additional DTV licenses

¹⁷⁴ BLTTA-20000707ADX.

¹⁷⁵ The licensee may elect to convert to advanced television services on its analog channel, but is not required to convert to digital format until the end of the DTV transition. Section-by-Section Analysis at S14725.

¹⁷⁶ *Report and Order* at ¶ 92.

¹⁷⁷ *Id.* at ¶¶ 90-95.

¹⁷⁸ CBA Petition at 5-6 (citing Section 336(f)(4)).

¹⁷⁹ *Report and Order* at ¶¶ 92.

¹⁸⁰ Grossman Petition at 2-3.

¹⁸¹ *Notice of Proposed Rulemaking* in MM Docket No. 00-39, 15 FCC Rcd 5257 (2000), at ¶ 37.

for Class A stations to a future rulemaking.¹⁸² Issues regarding the means of issuing such licenses will be considered in that proceeding.

2. Stations Operating Between 698 and 806 MHz

84. In the *Report and Order*, we decided not to impose any time limit on the filing of a Class A application by LPTV licensees operating on channels outside the core channels 2-51. We said that the CBPA provides that, if a qualified applicant for a Class A license operating on an out-of-core channel locates an in-core channel, the Commission “shall issue a Class A license simultaneously with the assignment of such channel,” but does not impose a time limit on the filing of such applications. We required stations operating on these channels to have filed a certification of eligibility within the time frame established in the statute (*i.e.*, by January 28, 2000), and granted these stations a presumption of displacement, permitting them to file displacement applications immediately if they can locate a replacement channel within the core spectrum.¹⁸³

85. We also stated that, when a qualified LPTV station outside the core seeking Class A status locates an in-core channel, we will require the station to file a Class A application simultaneously with its application for modification of license to move to the in-core channel. We said we will provide interference protection to such stations on the in-core channel from the date of grant of a construction permit for the in-core channel. Because the CBPA prohibits the award of Class A status to stations outside the core, we believed it would be inconsistent with the statute to provide interference protection on a channel outside the core. We stated that contour protection would commence with the award of a construction permit on the in-core channel, rather than a license to cover construction.¹⁸⁴

86. We decline to reconsider our decision not to impose a six month time limit on LPTV licensees on out-of-core channels seeking Class A status, as WB requests.¹⁸⁵ The CBPA provides that, if a qualified applicant for a Class A license operating on an out-of-core channel locates an in-core channel, the Commission “shall issue a Class A license simultaneously with the assignment of such channel.” The statute does not require that we impose a time limit on the filing of such applications, and we believe many LPTV stations outside the core will need additional time to locate an in-core channel. However, as we said in the *Report and Order*, in most cases, it would be in the best interest of qualified LPTV stations operating outside the core to try to locate an in-core channel now, as the core spectrum is becoming increasingly crowded and it is likely to become increasingly difficult to locate an in-core channel in the future.¹⁸⁶

87. We also disagree with KM’s suggestion that we should preserve the service area of all Class A-eligible LPTV stations from the date of filing of a certification of eligibility, even if such stations are still operating on out-of-core channels.¹⁸⁷ As we said in the *Report and Order*, the CBPA prohibits the

¹⁸² *Report and Order* at ¶ 95.

¹⁸³ *Id.* at ¶¶ 100 - 103.

¹⁸⁴ *Id.* at ¶ 103.

¹⁸⁵ WB Petition at 16.

¹⁸⁶ *Report and Order* at ¶ 103.

¹⁸⁷ KM Communications Petition at 11-12.

award of Class A status to stations outside the core. It would be inconsistent with the statute to provide interference protection to a channel outside the core. For instance, to do so would protect the service areas of those Class A-eligible stations that may never be able to secure use of an in-core channel. We did, however, protect the service areas of Class A-eligible LPTV stations that operate outside the core from the date that a construction permit is granted for a channel in the core.¹⁸⁸

88. We wish to clarify our policy with respect to those certified-eligible LPTV stations that are licensed on a core channel, and have received or applied for a displacement construction permit on an out-of-core channel. The authorized or proposed non-core facilities will not receive Class A protections. However, stations having a non-core construction permit or pending displacement application for such a permit as of the Class A filing deadline, and that have filed timely certifications of eligibility, will not be required to file a Class A application by that deadline, but rather at such later time as they file a displacement application for an available in-core channel. This will preserve Class A opportunities for a number of displaced LPTV stations.

3. Call Signs

89. In the *Report and Order*, we allowed Class A stations to use standard television call signs with the suffix “-CA” to distinguish the stations from “-LP” stations. We said that, upon grant of its initial Class A application, the qualifying LPTV licensee can change its station’s existing numerical or four-letter low power call sign to a four-letter call sign with the “CA” suffix.¹⁸⁹

90. We reaffirm our decision. We disagree with parties who claim that no public comment was afforded on the issue, and that the “CA” suffix might somehow confuse the public or diminish the value of a station’s Class A license.¹⁹⁰ Our decision in the *Report and Order* was made to address many parties’ expressed concerns that our proposal to use the suffix “-LP” would create confusion between LPTV, LPFM and Class A stations.¹⁹¹ As we have stated elsewhere in this proceeding, Congress in the CBPA intended to create a distinct group of stations that are neither LPTV stations nor full power broadcast stations. Use of the “-CA” suffix appropriately distinguishes this unique group of stations from secondary LPTV stations that use the “-LP” suffix and from primary full power stations that use the “-TV” suffix.¹⁹² We are not persuaded that a Class A station identification such as the following will confuse the public: “This is Class A Television Station WXXX-CA...” We note further that use of the suffix is not required for purposes of station promotion, such as station letterhead.

IV. CONCLUSION

91. In this *Memorandum Opinion and Order on Reconsideration*, we generally reaffirm the decisions we reached in the *Report and Order*, although we make some changes and clarify certain aspects of our rules, as described above. Pursuant to the CBPA and our implementing rules, certain qualifying LPTV stations will be accorded “primary” status as television broadcasters. The actions we

¹⁸⁸ *Report and Order* at ¶ 103.

¹⁸⁹ *Report and Order* at ¶ 116.

¹⁹⁰ CBA Petition at 12-13; Grossman Petition at 2; Schrecongost Petition at 2-4.

¹⁹¹ *Report and Order* at ¶ 116.

¹⁹² Grossman Petition at 2; PAI Petition at 9 (citing 47 U.S.C. § 336(f)(1)(A)).

have taken today and in the *Report and Order* will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming to their local communities. By improving the viability of these stations, our action today promotes our fundamental goals of ensuring diversity and localism in television broadcasting.

ADMINISTRATIVE MATTERS

92. *Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, as amended,¹⁹³ the Commission's Supplemental Final Regulatory Flexibility Analysis has been completed and attached as Appendix C.

93. *Paperwork Reduction Act Analysis.* The actions taken in this *Order on Reconsideration* have been analyzed with respect to the paperwork Reduction Act of 1995, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act.

V. ORDERING CLAUSES

94. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 303, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, and 336(f), Part 73 of the Commission's rules, 47 C.F.R. Part 73, and Part 74 of the Commission's rules, 47 C.F.R. Part 74, ARE AMENDED as set forth in Appendix A below.

95. IT IS FURTHER ORDERED that the amendments set forth in Appendix A SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

96. IT IS FURTHER ORDERED that the new or modified paperwork requirements contained in this Memorandum Opinion and Order on Reconsideration (which are subject to approval by the Office of Management and Budget (OMB)) will go into effect upon OMB approval.

97. IT IS FURTHER ORDERED that the petitions for reconsideration or clarification listed in Appendix B ARE GRANTED to the extent provided herein and otherwise ARE DENIED.

98. IT IS FURTHER ORDERED that the Motion for Acceptance of late-Filed Petition for Reconsideration, filed on June 12, 2000 by Larry L. Schrecongost, IS GRANTED.

99. IT IS FURTHER ORDERED that the Emergency Petition for Extension of Time, filed on December 4, 2000 by John W. Smith, Jr., IS DISMISSED.

100. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Memorandum Opinion and Order on Reconsideration*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

101. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

¹⁹³ See 5 U.S.C. § 601 *et. seq.*

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A: Rule Modifications

Appendix B: List of Parties to the Proceeding

Appendix C: Supplemental Final Regulatory Flexibility Analysis

APPENDIX A
Rule Modifications

List of Subjects

47 CFR Part 73 and Part 74

Radio broadcasting

Rule Changes

For the reasons set forth in the preamble parts 73 and 74 of Title 47 of the U.S. Code of Federal Regulations are amended to read as follows:

PART 73 - RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: (47 U.S.C. 154, 303, 334, 336.)

* * * * *

2. The authority citation for Subpart J of Part 73 continues to read as follows:

Subpart J - Class A Television Broadcast Stations

Authority: (47 U.S.C. 336(f))

3. Section 73.1125 is revised to read as follows:

§ 73.1125 Station main studio location.

(c) Each Class A television station shall maintain a main studio at a location within the station's predicted Grade B contour, as defined in Section 73.683 and calculated using the method specified in Section 73.684 of this part. With respect to a group of commonly controlled stations, Class A stations whose predicted Grade B contours are physically contiguous to each other may locate their main studio within any of these contours. If a Class A station is one of a group of commonly controlled Class A stations, but its predicted Grade B contour is not physically contiguous to that of another Class A station in the commonly owned group, its main studio shall be located within its own predicted Grade B contour. Alternatively, a Class A television station shall maintain a main studio at the site used by the station as of November 29, 1999.

4. Section 73.1545 is amended by revising paragraph (e) as follows and adding a related note.

§ 73.1545 Carrier frequency departure tolerances.

- (e) *Class A TV Stations.* The departure of the carrier frequency of Class A TV stations may not exceed the values specified in section 74.761 of this chapter. Provided, however, that Class A TV stations licensed to operate with a carrier offset, including those stations licensed with a maximum effective radiated power and/or antenna height greater than the values specified in their initial Class A TV station authorization, must comply with paragraph (c) of this section.

Note: At a date not later than nine months after release of the *Memorandum Opinion and Order on Reconsideration* in MM Docket No. 00-10 (the proceeding that established the Class A TV service), all licensed Class A stations must operate with a carrier frequency offset. See *Memorandum Opinion and Order on Reconsideration, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, released April 13, 2001.

5. Section 73.6000 is amended to read as follows:

§ 73.6000 Definitions.

“*Locally produced programming.*” For the purpose of this subpart, locally produced programming is programming: (1) produced within the predicted Grade B contour of the station broadcasting the program or within the contiguous predicted Grade B contours of any of the stations in a commonly owned group; or (2) programming produced at the station’s main studio.

Note: See *Report and Order, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, released April 4, 2000; *Memorandum Opinion and Order on Reconsideration, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, released April 13, 2001.

5. Section 73.6024 is amended to read as follows:

§ 73.6024 Transmission Standards and system requirements.

(c) A Class A TV station must meet the offset carrier frequency and frequency tolerance provisions of § 73.1545 of this part.

6. Section 73.6026 is amended to read as follows:

§ 73.6026 Broadcast regulations applicable to Class A television stations.

The following rules are applicable to Class A television stations:

§ 73.603 Numerical designation of television channels.

§ 73.635 Use of common antenna site.

§§ 73.624(b), (c) and (g). Digital television broadcast stations. Section (b) will apply only to the extent

that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station

§ 73.642 Subscription TV service.

§ 73.643 Subscription TV operating requirements.

§ 73.644 Subscription TV transmission systems.

§ 73.646 Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal.

§ 73.653 Operation of TV aural and visual transmitters.

§ 73.658 Affiliation agreements and network program practice; territorial exclusivity in non-network program arrangements.

§ 73.664 Determining operating power.

§ 73.665 Use of TV aural baseband subcarriers.

§ 73.667 TV subsidiary communications services.

§ 73.669 TV stereophonic aural and multiplex subcarrier operation.

§ 73.670 Commercial limits in children's programs.

§ 73.671 Educational and informational programming for children.

§ 73.673 Public information initiatives regarding educational and informational programming for children.

§ 73.688 Indicating instruments.

§ 73.691 Visual modulation monitoring.

APPENDIX B**List of Parties to the Proceeding****Comments**

Bozeman Media Group, North Rocky Mountain Television, LLC
and Pocatello Media Group (Bozeman)
Carolina Christian Broadcasting, Inc (Carolina)
Community Broadcasters Association (CBA)
Davis Television Duluth, LLC, et. al. (Davis)
Entravision Holdings, LLC (Entravision)
Grossman, Sherwin (Grossman)
International Broadcasting Network (IBN)
Kelly, Robert E. (Kelly)
KM Communications, Inc. (KM)
Mid State Television, Inc. (Mid State)
New York Metropolitan Advisory Committee (NYMAC)
Paging Associates, Inc. (PAI)
Resort Sports Network, Inc. (RSN)
Ross Communications, Ltd.(Ross)
Saga Broadcasting Corp. (Saga)
Schrecongost, Larry L. (Schrecongost)
Sonshine Family Television, Inc. (Sonshine)
Specialty Broadcasting Corporation (Specialty)
Tiger Eye Broadcasting Corp. (Tiger Eye)
Univision Communications, Inc (Univision)
USA Broadcasting, Inc. (USAB)
WB Television Network (WB)

Oppositions

Community Broadcasters Association
Davis Television Duluth, et. Al.
KM Communications, Inc.
National Cable Television Association (NCTA)

Replies

Davis Television Duluth, LLC, et. Al.
KM Communications, Inc.
Paging Associates
Sonshine Family Television, Inc.

APPENDIX C

Supplemental Final Regulatory Flexibility Analysis

102. As required by the Regulatory Flexibility Act (RFA),¹⁹⁴ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (Notice)*¹⁹⁵ and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Report and Order*.¹⁹⁶ The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were received in response to the IRFA or the FRFA. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.¹⁹⁷

Need for, and Objectives of, the *Memorandum Opinion and Order on Reconsideration*

103. The Community Broadcasters Protection Act of 1999 (CBPA) directed the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to licensees of qualifying low-power television (LPTV) stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as a television broadcaster as long as the station continues to meet the requirements set forth in the statute for a qualifying low-power station. In addition to other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking to obtain Class A status, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or NTSC), digital (DTV), LPTV, and TV translator stations.

104. The Commission adopted the *Report and Order* to implement the CBPA. In that Order, we determined that the service areas of LPTV licensees would be preserved from the date the Commission receives a certification of eligibility for Class A status, as long as the certification is ultimately approved by the Commission. The *Report and Order* interpreted the CBPA to require that Class A stations protect both existing analog stations and full power analog applicants that have completed all processing short of grant. Similarly, the *Report and Order* required Class A stations to protect the digital service areas of DTV facilities proposed in an application pending as of the CBPA enactment date (November 29, 1999) and that had completed all processing short of grant as of that date. The *Report and Order* generally applied to Class A applicants and licensees all Part 73 regulations except those that

¹⁹⁴ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹⁹⁵ *Order and Notice of Proposed Rule Making, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, MM Docket No. 99-292, RM-9260, FCC 00-16 (rel. January 13, 2000)(*Notice*), App. A.

¹⁹⁶ *Report and Order, In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, 15 FCC Rcd 6355, 6437 (2000) (*Report and Order*).

¹⁹⁷ See 5 U.S.C. § 604.

cannot apply for technical or other reasons. The *Report and Order* also addressed a wide range of other issues related to the implementation of the CBPA, including the protected service area of Class A stations, Class A interference protection requirements *vis-à-vis* other TV stations, common ownership restrictions applicable to Class A stations, and the treatment of modification applications filed by Class A licensees.

105. In this *Memorandum Opinion and Order on Reconsideration*, we do not change most of the determinations made in the *Report and Order*. We do, however, adopt the following changes. We modify our main studio location requirements with respect to LPTV stations in a commonly owned group. We also clarified our definition of "local programming" with respect to LPTV stations in a commonly owned group. We permit Class A television stations that convert to digital operation to offer ancillary or supplementary services in the same manner as full power DTV stations. We clarify that Class A stations have the same limited must carry rights as LPTV stations, but do not have the same must carry rights as full service television stations under Part 73 of the Commission's rules. To foster efficient spectrum utilization, we modify our decision regarding the use of carrier frequency offsets by Class A stations, by establishing a deadline for the required use of offsets and requiring the use of such offsets to accommodate, where possible, certain Class A and full-service NTSC station proposals.

Summary of Significant Issues Raised by Public Comments

106. No comments were received in response to the IRFA. Furthermore, no petitions or comments were received on the *Report and Order* concerning the FRFA. Two petitioners,¹⁹⁸ however, did file Petitions for Reconsideration raising concerns about the main studio staffing requirements. These petitioners advised that the Commission Class A staffing requirements were too costly.¹⁹⁹ As a result of petitioners' comments, we clarified that the staffing standard does not necessarily require two full-time staff to be present at the main studio. Rather, management and staff presence are required on a full-time basis, which may consist of more than two people working on part-time bases. In addition, the Commission amended the main studio requirement so that commonly owned Class A stations having contiguous boundaries may share a single main studio. Further analysis of this issue may be found below in the section on minimizing significant impacts.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Apply

107. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules.²⁰⁰ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁰¹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁰² A small business concern is one which: (1) is

¹⁹⁸ IBN Petition at 1-2; Tiger Eye Petition at 4-6.

¹⁹⁹ *Id.*

²⁰⁰ 5 U.S.C. § 603(b)(3).

²⁰¹ 5 U.S.C. § 601(6).

²⁰² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁰³

108. Small TV Broadcast Stations. The SBA defines small television broadcasting stations as television broadcasting stations with \$10.5 million or less in annual receipts.²⁰⁴ The *Memorandum Opinion and Order on Reconsideration* modifies certain rules applicable to Class A television licenses, which are available to licensees of qualifying LPTV stations. According to the Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, virtually all LPTV broadcast stations have revenues of less than \$10.5 million. Currently, there are approximately 2,200 licensed LPTV stations.²⁰⁵ The Commission notes, however, that under SBA's definition, revenues of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. The Commission's estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

109. We anticipate that the frequency offset requirement in the *Memorandum Opinion and Order on Reconsideration* will result in changes to the reporting and recordkeeping requirements of Class A stations. When a Class A station begins operating with a frequency offset, it will be necessary for it to notify the Commission in writing.

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.

110. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁰⁶

111. The *Report and Order* adopted a number of rules designed to help LPTV stations seeking to convert to Class A status and exempts Class A licensees from Part 73 rules that clearly could not apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons. Although the *Report and Order* applied the main studio rule for the first time to LPTV stations who qualify as Class A stations, requiring them to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules, the *Report and Order* grandfathers the main studios at the site in use as of November 28, 1999. As discussed above, several petitioners expressed concern about the main studio requirement and its effect on small entities. Petitioners argued that the cost of the main studio staffing requirement, as adopted in the *Report and Order*, was financially

²⁰³ 15 U.S.C. § 632.

²⁰⁴ 13 C.F.R. § 121.201 (SIC Code 4833).

²⁰⁵ *Public Notice*, "Broadcast Station Totals as [of] September 30, 1999" (*rel.* November 22, 1999).

²⁰⁶ 5 U.S.C. § 603(c)(1)-(4).

prohibitive for small businesses and would result in the demise of Class A stations.²⁰⁷ This *Memorandum Opinion and Order on Reconsideration* both clarifies and modifies the rules set forth in the *Report and Order*. These revisions work together to reduce both the staffing burden and the burden of maintaining multiple studios by permitting commonly owned LPTV stations having contiguous boundaries to share a main studio and staff. This alternative significantly reduces the costs associated with maintaining multiple studios and additional staff. In contrast the Commission could have merely clarified the staffing rule as set forth in the *Report and Order* and not modified the main studio location rule; however, the result works to benefit those small entities with multiple stations. Any further relaxation of the main studio rules would have been inconsistent with the intention and language of the CPBA which requires Class A stations to have a local presence and local programming.

112. In the *Memorandum Opinion and Order on Reconsideration* we permit Class A television stations that convert to digital operation to offer ancillary or supplementary services in the same manner as full power DTV stations. A petitioner to the *Report and Order*²⁰⁸ requested a modification of the rules to allow such stations to offer telecommunications services on either an ancillary or supplemental basis in the event that the station decides to convert to DTV. We have complied with this request and have created an alternative for Class A stations which are interested in converting to digital operation. Since this is optional, it in no way should be perceived as a requirement for Class A licensure or operation. Class A stations are not required to convert to DTV under the CBPA.

113. Lastly, we modify our decision regarding the use of carrier frequency offsets by Class A stations. We now require the use of frequency offsets to accommodate, where possible, certain Class A and full-service NTSC stations and, more generally, will require all Class A stations to specify operation with an offset within nine months of the release of this *Memorandum Opinion and Order*. In response to the *Report and Order*, two parties²⁰⁹ requested this modification in order to allow the stations to make more efficient use of scarce broadcast spectrum. These frequency offsets are of a nominal nature and if required, would result in the expenditure of modest financial resources. We believe that offset operations will greatly facilitate an increase in the number of Class A stations by maximizing use of the broadcast spectrum. The alternative, if we had not granted petitioners' requests, would have been to continue with the existing rule. Such a continuation would have resulted in fewer LPTV stations becoming Class A stations. Furthermore, this modification only affects those LPTV stations which choose to apply for a Class A license.

114. **Report to Congress:** The Commission will send a copy of the *Memorandum Opinion and Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²¹⁰ In addition, the Commission will send a copy of the *Memorandum Opinion and Order on Reconsideration*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Memorandum Opinion and Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.²¹¹

²⁰⁷ See Tiger Eye Petition at 4-5. See also IBN Petition at 1-2.

²⁰⁸ Telecom Services, Inc., *ex parte* presentation (August 28, 2000).

²⁰⁹ KM Petition at 11-12; Mid State Petition at 1-4.

²¹⁰ See 5 U.S.C. § 801(a)(1)(A).

²¹¹ See 5 U.S.C. § 604(b).